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G. W. Wakefield Esq QC

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Ontario. Laws, statutes, etc. Municipal 4 7 law.

THE

MUNICIPAL MANUAL

C#.

FOR

UPPER CANADA,

CONTAINING

THE NEW MUNICIPAL AND ASSESSMENT ACTS,

WITH NOTES OF ALL DECIDED CASES,

SOME ADDITIONAL STATUTES,

AND

A FULL INDEX.

By ROBERT A. HARRISON, Esq., D.C.L.

BARRISTER-AT-LAW.

SECOND EDITION.

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TORONTO:

W. C. CHEWETT & CO., 17 & 19 KING STREET EAST.

1867.

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Rec. Oct. 23 1899.

PRINTED AT THE STEAM-PRESS ESTABLISHMENT OF W. C. CHEWETT & CO.
KING STREET EAST, TORONTO.

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TO

THE HONOURABLE JOHN HAWKINS HAGARTY, D.C.L.

ONE OF THE JUDGES

OF THE

COURT OF QUEEN'S BENCH FOR UPPER CANADA,

THIS NEW EDITION

OF THE

MUNICIPAL MANUAL FOR UPPER CANADA

IS INSCRIBED,

WITH GREAT RESPECT,

BY HIS FORMER PUPIL,

THE EDITOR.

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PREFACE TO THE FIRST EDITION.

In the prospectus issued for this work it was said that the Municipal Laws of Upper Canada are in importance second to none of the laws of the Province, and that every Municipal Corporation is a small Parliament, possessed of extensive but yet limited powers. It was then pointed out, that to ascertain in every case the existence or non-existence of a power—the nature of it—its precise limit and the mode in which it should be exercised is the object of all who are in any manner concerned in the administration of Municipal affairs.

When it is considered, that in the first instance these matters are to be determined by Municipal Councils, seldom containing Members versed in the laws, often acting without the aid of professional advice, the importance of a guide becomes, as said in the prospectus, manifest.

That guide it has been the aim of the Editor in the following pages to produce. He now proposes as briefly as possible to state upon what principles and in what manner he has performed his task.

The Legislature, having by the Consolidated Act of the present year, classified many Municipal enactments and repealed many of those that were effete or thereby rendered useless, the Editor with the assistance of legal friends of greater experience than himself, in the first place applied himself to the work of expounding the Consolidated Act by the light of adjudged cases. This he did patiently and assiduously, noting latent difficulties and explaining as far as possible all difficulties of every kind that occurred to him. The result is a body of notes more elaborate than he contemplated when he began his labors. All decisions reported in time for his pen, have been carefully epitomized and introduced into the notes so written.

Having in this manner continued his labors until the completion of the Consolidated Act, he next turned his attention to other Acts of a like kind, promiscuously scattered through the twenty-two volumes containing the Provincial Statutes. Beginning at the first Act he selected in chronological order such Acts as from their nature a person would expect to find in a

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Municipal Manual, until he reached the last Act of the kind now in force. The result is a large collection of Acts and parts of Acts added to the end of the Consolidated Municipal Act.

One great difficulty which the Editor experienced from first to last, was to publish all Acts at all of use to Municipalities, and yet to keep his book in a single volume of moderate dimensions. To accomplish this, Acts have been abbreviated by the omission of mere formal matter, Acts of a private nature and so of little public utility have been in some places abridged by the statement of substance only, and in others nothing has been given except the title or heading, when expressive of the object. Other Acts, such as those regulating the inspection of Beef, Pork, Ashes and the incorporation of Road and other Companies have, because of their great length and comparatively speaking little general utility, been entirely excluded. So have the Common School and Grammar School Acts. The reason of the exclusion of the latter is that they are contained in "The Educationa Manual," a small work within the reach of all, and it is presumed in the possession of all engaged in the execution of those Statutes.

The arrangement adopted has been the chronological, in preference to the analytical. The reason being that by such an arrangement the growth of the law is opened up to public view, while for convenience of reference the addition of a very full analytical Index imparts to the work all the benefits of analysis. Thus, under Toronto, Kingston, Hamilton, &c., in the Index will be found references to Acts applying specially to these Cities though published in different parts of the Volume. To make the chronological arrangement still more effective, the Editor has, as a rule, in the margin of each Statute wherever it is altered or affected by a subsequent Statute, made a reference to the subsequent Statute. The object of this is to guard against reading any one provision as the only or whole law on the subject wherever there are others which ought to be read in connexion with it.

For the convenience of the legal profession as well as for the information of all concerned, the Rules of Court governing contested Municipal Elections, have been added in the Appendix and noted in the general Index like other parts of the work. In the Appendix will also be found a form of By-law to contract a debt by borrowing money. The utility not to say necessity of such forms is well known. In the preparation of this edition of the MUNICIPAL MANUAL, the Editor had neither the time nor the materials to enable him to give a complete set of Municipal Forms. He, however, did what he could towards supplying the void by preparing a form of a By-law of more general use than that of any other form of By-law. His reasons for so doing were two-fold. First, to furnish a model whereby other By-laws may be drawn. And secondly, to furnish a form for that

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By-law, which of all others must essentially be correct both in form and in substance.

Great responsibility rests upon those who undertake to prepare By-laws, on the legality or illegality of which large monied transactions are made to depend. Some form must be observed; and yet a close adherence to technical nicety may in certain cases work positive injustice. Were it possible to secure for money By-laws the stamp of legality, so as to remove all suspicion of informality, irregularity or illegality, the effect would be eminently beneficial. It would beget a spirit of confidence, alike of advantage to the seller and to the buyer of Municipal debentures. Less room would be left for speculation or trade in the fears of men or contingencies of law, and more stability be imparted to the negotiation of Canadian Municipal Securities; one consequence of which—and not the least—would be, that the market value of all such securities would be proportionably increased. The only mode likely to attain so desirable an end that at present occurs to the Editor, would be to require all By-laws of this kind to be approved by some public functionary, and, when approved, to be unimpeachable on the ground of informality or want of technical accuracy. Such is the principle applied to By-laws passed to raise money on the credit of the Consolidated Revenue Fund. It is enacted, that "no informality or irregularity in any such By-law, or in the proceedings relative thereto, anterior to the passing thereof, shall in any manner affect the validity thereof, after the Governor-General in Council shall have approved of such By-law; but the order in Council approving such By-law shall be held to cover any such informality or irregularity, and the By-law shall be valid to all intents and purposes." (16 Vic. cap. 123, sec. 5.)

It is easy to perceive how efficacious would be this seal of approval, if applied to all money By-laws. The object of it is to secure the confidence of the public. That object is as much needed in the case of any ordinary money By-law, as one to raise money on the credit of the Consolidated Municipal Loan Fund; and if beneficial in the one case, the Editor cannot help suggesting that the benefits ought, by some appropriate machinery, to be extended to all similar cases. Indeed the Legislature have, in other instances, partially affirmed the principle. It is by the Consolidated Municipal Act enacted, that "in case a By-law by which a rate is imposed has been specially promulgated in the manner specified, no application to quash the By-law shall be entertained after six calendar months have elapsed since its promulgation," (sec. 195,) and that "in case no application to quash any By-law so specially promulgated is made within the time limited for that purpose, the By-law, or so much thereof as is not the subject of any such application, or not quashed upon such application, so far as the same

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ordains, prescribes or directs any thing within the proper competence of the Council to ordain, prescribe or direct, shall, notwithstanding any want of substance or form, either in the By-law itself or in the time or manner of passing the same, be a valid By-law." (Sec. 200.)

With these observations, the present edition of the MUNICIPAL MANUAL is submitted to the public. Of the public, the Editor has only one request to make. It is, that imperfections are not to be attributed to neglect, but to circumstances—such as want of time and want of space—over which he, however well disposed, had no control.

QUEEN STREET WEST,
22*nd December*, 1858.

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PREFACE TO THE SECOND EDITION.

Nine years have elapsed since the publication of the first edition of this work. During that period the first edition, which was a very large one, has been exhausted, and during the same period many alterations have been made in the Municipal and Assessment laws of Upper Canada, and many cases decided on the construction of the Acts. Besides, the Municipal and Assessment Acts, as from time to time altered, were, during last session of Parliament, amended and consolidated.

Some of the alterations and amendments are undoubtedly for good. The office of Councilman for cities has been abolished, and the number of Aldermen for each ward increased from two to three, and these, instead of being yearly elected as heretofore, will retire from office annually by rotation. There are two Councillors allowed for each ward of an incorporated village having five wards, one of whom also retires annually in rotation. Mayors of cities are no longer chosen by the electors, but by members of the Council from among themselves. On the other hand, Reeves and Deputy Reeves are no longer chosen by Councillors from among themselves, but elected by the people. There may be several Deputy Reeves, in proportion to the number of voters, there being an additional Deputy Reeve allowed for every five hundred additional voters beyond the number required for Reeve and Deputy Reeve. The property qualification of candidates and voters in cities, towns and villages, has been greatly increased. Candidates or voters who have not paid their taxes are disqualified. Provision is made for nomination to offices in cities, towns, incorporated villages, police villages and townships. Only one day is allowed for polling votes, and in towns and cities voters may vote in each ward in which they are rated for the necessary property qualification. Annual value, in cities, towns and incorporated villages, has been abolished, and actual value, as in townships, made the rule of assessment. No Council is allowed, exclusive of School rates, to assess in any one year more than an aggregate of two cents in the dollar on actual value. If, however, in any municipality, the aggregate amount of the rates necessary for the payment of current annual expenses, and the principal and interest of the debts contracted on or before the 15th August, 1866, on that day exceed the aggregate rate of two cents in the dollar on actual value, the Council may levy such further rates as

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may be necessary to discharge obligations already incurred, but shall contract no further debts until the annual rates required to be levied within the municipality are reduced within the aggregate rate of two cents. County Treasurers, and not Sheriffs, are now made the proper officers to sell lands for arrears of taxes. The onus of keeping county roads in repair may, under certain circumstances, be thrown upon adjacent local municipalities. Besides, township municipalities may purchase wild lands from Government, drain, and afterwards sell them. Other changes, of less consequence, unnecessary to be here mentioned, will be found noticed in the proper places throughout the volume.

The value of this edition of the Manual, as compared with the former one, will be found greatly increased, owing to the number of decided cases to which the Editor, while annotating the Municipal and Assessment Acts, has found it necessary to refer. Whilst in the former edition reference is made to not more than two hundred, in this edition reference is made to more than six hundred decided cases. Many points that were left in doubt when the first edition was published, have since been settled by judicial interpretation. The Editor has in every case, in his notes, given as nearly as possible the very language of the Judges. On some points decisions will be found in apparent conflict, and the Editor has, wherever conflict was apparent, done his best to reconcile the decided cases. But he is happy to say that the conflicts are few; and now that the law has been consolidated, there will be less risk of conflict in the future. With Courts of co-ordinate jurisdiction, and where, as in *quo warranto* cases, single Judges sit without appeal, conflict of opinion and decision can scarcely be avoided. The Editor has endeavored, under the proper section and in the proper place, to note every decided case bearing on the point under consideration. But, considering the multiplicity of decisions, it is possible that some have been unintentionally omitted. Should any such be discovered by any of his professional brethren, he will only be too happy to be informed of the omission.

Several statutes, bearing on the duties and powers of municipal bodies, which have been selected from the Consolidated Statutes of Canada, the Consoldated Statutes of Upper Canada, and the Statutes of Canada since the consolidation, are published at the end of the work, preceding the Index. The Editor does not assert that he has published all statutes and parts of statutes, directly or indirectly affecting municipal bodies. Were he to do so, it would be impossible for him to keep his work within reasonable bounds. He has therefore contented himself with a selection of the principal statutes; and in order to accomplish this, has been obliged to exclude from this edition several acts of a local and private nature, which are contained in the former

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edition of the Manual. The omission of the latter will not render the work the less useful to the general body of those who will require to use it, while it has the effect of keeping the volume within a convenient and portable form.

The preparation of the Index, as well as the supervision of the work while passing through the press, was entrusted to Henry O'Brien, Esq., Barrister-at-Law, a gentleman who is already favorably known to the profession as one of the Editors of "The Upper Canada Law Journal" and "The Local Courts Gazette," and editor of an ably annotated edition of the Division Courts Act. The Index, which is very full, will, it is hoped, be found all that is necessary to the ready use of the work. Much labour has been bestowed upon it, and, so far as the Editor can judge, it has been carefully compiled.

Imperfections in the work, either on the part of the Editor or of his assistant, are not to be attributed to wilful neglect; but as no such work can be made perfect, the Editor must ask forbearance. Much labour has been expended on it, and it is hoped that it will not only lighten the labour of members of the legal profession, but have the effect of expounding and making known the Municipal and Assessment law to the many, not members of the profession, whose duty it is to give effect to the law, and work under it.

The first edition of the work received a generous support, as well from the legal profession as the great body of the Municipal Councillors and officers of Upper Canada. It is hoped that this edition, to which the Editor has devoted much thought, will be equally well received. The delays which have occurred in its issue were unavoidable, and to some extent rendered necessary by reason of the Editor's great anxiety to make his work simple in its language and reliable in its exposition of the law. The work is intended not merely for lawyers, but for men unacquainted with the niceties of law. Most of the notes are therefore written in a popular style, and as free as possible from legal phraseology.

ENGLEFIELD, TORONTO,
26th March, 1867.

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EXPLANATION OF ABBREVIATIONS.

U. C. Q. B.—The Upper Canada Queen's Bench Reports.
U. C. C. P.—The Upper Canada Common Pleas Reports.
U. C. Pr. R.—The Upper Canada Practice Court Reports.
U. C. Cham. R.—The Upper Canada Chamber Reports.
U. C. L. J.—The Upper Canada Law Journal.
L. C. G.—The Municipal and Local Courts' Gazette.
R. & H. Dig.—Robinson & Harrison's Digest of the Upper Canada Reports.
H. & O'B. Dig.—Harrison & O'Brien's Digest of the Upper Canada Reports.
a. & c.—Additions and Corrections.

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THE

MUNICIPAL MANUAL.

AN ACT RESPECTING THE MUNICIPAL INSTITUTIONS OF UPPER CANADA, (a)

Being Chapter 51 of 29–30 Vict., as amended by Chapter 52.

[Assented to 15th August, 1866.]

HER MAJESTY, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows: Preamble.

EXISTING INSTITUTIONS CONTINUED.

1. The inhabitants of every County, City, Town, Village, Township, Union of Counties and Union of Townships incorporated at the time this Act takes effect, shall continue to be a body corporate, and every Police Village then existing shall Municipal Corporations continued.

(a) It has been objected to Statutes, both Imperial and Colonial, that their sections are generally involved in a number of provisos, and filled with a redundancy of words. For the first, the remedy suggested is distinctness of subjects, short clauses, short sentences, and the avoidance of tautology. For the second, the use of the present instead of the future tense, as being a more familiar style of writing, and preventing the frequent use of the word "shall" as a mere auxiliary, expressing the future at one time and obligation or penal consequences at another. The framers of this Act, alive to the nature of such objections, have evidently sought to supply the appropriate remedies. The absence of proviso upon proviso, and the substitution of short and complete clauses, manifests a laudable desire to avoid all ground of objection on the first head. The use of the present, instead of the future tense throughout the act also attests the anxiety of the framers to avoid obscurity. The propriety of this mode of expression depends upon the principle, that in a statute as at common law, the law is at all times supposed to be speaking. The use of the future tense rests upon the principle that a statute speaks at and from the time that it becomes a law, and that so speaking, as it were prospectively, its provisions

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continue to be a Police Village, with the municipal boundaries of every such Corporation and Police Village respectively then established.

Police Villages.

2. The trustees of every Police Village existing when this Act takes effect, shall be deemed the trustees respectively of every such Village as continued under this Act.

Heads, Officers, By-laws, &c., continued.

3. The head and members of the Council, and the officers, by-laws, contracts, property, assets and liabilities of every Municipal Corporation, and the inspecting trustees of every Police Village existing when this Act takes effect, shall be deemed the head and members of the Council, and the officers, by-laws, contracts, property, assets and liabilities of such Corporation and inspecting trustees of such Police Village, as continued under and subject to the provisions of this Act.

NAMES AND GOVERNING BODY.

1.—Corporations.

Names of Municipal Corporations

4. The name of every body corporate continued, or erected under this Act, shall be *The Corporation of the County, City, Town, Village, Township, or United Counties, or United Townships,* (as the case may be), *of* (naming the same). (*b*)

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must be expressed in the future tense. If it be a correct rule that a law speaks at all times as ever operative, the correctness of framing it in the present tense cannot be denied, and this, whether the law is to be applied to present or passing, or to past, or to future events. The effect of reading a statute thus framed, is that the Legislature is regarded as always present—pronouncing the law so long as the law exists—the consequences of which is, that the law meets every event to which it is applicable, as the event arises (Con. Stat. U. C., cap. 2, s. 18, sub-s. 1). When it is considered that this act is for the guidance and government of Municipal Councils, themselves law-makers, throughout the length and breadth of Upper Canada, the importance of simplicity and perspicuity cannot be overrated. The act and every provision of it is to be deemed remedial. Whether its immediate purport is to direct the doing of any thing which the Legislature deems for the public good, or to prevent or punish the doing of anything which it deems contrary to the public good, the act is to receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of its passing, and accord with its true intent, meaning and spirit. (Con. Stat. Can., cap. 5, s. 6, sub-s. 28.)

(*b*) Words making any association or number of persons a Corporation or body politic and corporate, vest in the Corporation power to sue and be sued—to contract and be contracted with in their corporate name—to have a common seal, and to alter and change the same at their pleasure; to have perpetual succession, and power to acquire and hold personal property or moveables for the purposes for which the

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5. The inhabitants of every junior county upon a Provi- Names of Provisional Corporations

Corporation is constituted, and to alienate the same at pleasure, and also, when not otherwise provided for, a majority of the members of the Corporation to bind the minority by their acts, and exempt the individual members of the Corporation from personal liability for its debts, obligations or acts, provided they do not contravene the provisions of the Act incorporating them. (Con. Stat. Can., cap. 5, s. 6, sub-s. 24.)

To consider these powers more in detail.

The *first* in order is "to sue and be sued." A Municipal Corporation, like an individual, under the limitations involved in its constitution and organization, may have recourse to the Courts of the country to enforce rights and redress wrongs. So one Municipal Corporation may sue another. (*Huron District Council* v. *London District Council*, 4 U. C. Q. B. 302.) So a Municipal Corporation may be sued for a breach of contract, and in certain cases for wrongful acts not arising out of contract. Thus a Municipal Corporation may be sued for negligence in the construction of a sewer, malfeasance in illegally obstructing a drain or water course, so as to injure the owner or owners of land adjoining, or for wrongfully diverting a stream of water on plaintiff's land. (*Farrell* v. *The Mayor and Town Council of London*, 12 U. C. Q. B. 343; *Reeves* v. *The Corporation of the City of Toronto*, 21 U. C. Q. B. 157; *Perdue* v. *The Corporation of the Township of Chinguacousy*, 25 U. C. Q. B. 61.) To support an action against a Municipal Corporation of the nature suggested, although it is not necessary to show any authority under seal to the person or persons who under the supposed instructions of the Corporation actually did the wrongful act, something must be shewn to connect the Corporation as a body with the doing of the act. (*Farrell* v. *The Mayor and Town Council of London*, 12 U. C. Q. B. 343.) If the Corporation had a right to do that which they are charged as having wrongfully done, it seems they may plead in general terms that they did the act complained of as they lawfully might for reasons assigned. (*Brown* v. *The Municipal Council of Sarnia*, 11 U. C. Q. B. 87.)

The *second* power is to "contract and be contracted with." It is a principle applicable to all Corporations, that they must contract under seal. To this principle there are some exceptions. One of some moment has been created with regard to Municipal Corporations. It is that such a Corporation is liable to be sued in an action of debt on simple contract for the price of goods furnished, or labor done at their request and accepted by them. (*Fetterly* v. *The Municipality of Russell and Cambridge*, 14 U. C. Q. B. 433). Though in such a case there be no contract under seal, the law implies an undertaking by a Corporation to pay for labor and materials employed in their service, and of which they have accepted and are enjoying the benefit, provided the purpose for which the labor and materials have been applied is one clearly within the legitimate object of their charter. (*Bartlett* v. *The Municipality of Amherstburgh*, 14 U. C. Q. B. 152; *Fetterly* v. *The Municipality of Russell and Cambridge*, 14 U. C. Q. B. 433; *Pim* v. *The Municipal Council of Ontario*, 9 U. C. C. P. 304; *Perry* v. *The Corporation of Ontario*, 23 U. C. Q. B. 391; *Nicholson* v. *The Guardians of the Bradford Union*, 1 L. R. Q. B. 620.) The exception, however, does

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sional Council being or having been appointed for the county,

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not extend to executory contracts, such as work, &c., *to be* done, but is confined to work in fact done and accepted. (*McLean* v. *The Town Council of the Town of Brantford*, 16 U. C. Q. B. 347; *Wingate* v. *The Enniskillen Oil Refining Company*, 14 U. C. C. P. 379.) An individual dealing with a corporation through its council or the members of the governing body, is bound to notice the objects and limits of their powers and the manner in which those powers are to be exercised, and it is of much consequence that it should be borne in mind that their acts when beyond the scope of their authority or done in a manner unauthorized, are in general nugatory and not binding on the Corporation. (*Ramsay et al.* v. *The Western District Council*, 4 U. C. Q. B. 374.) Where work was done under a contract not made with the Corporation or any of its known officers, but merely with persons assuming to act as a duly appointed committee, it was held that no action would lie against the Corporation. (*Stoneburgh* v. *The Municipality of Brighton*, 5 U. C. L. J. 38). No action can be sustained for a breach of duty against the head of a Corporation in not applying the seal to make a contract between a Corporation and an individual, founded on a refusal (which if there had been a previous valid contract) would have constituted a breach of it; in other words, there cannot be a remedy against the head of a Corporation, equivalent to a remedy on the contract against the Corporation, had the contract been duly made so as to create a valid and binding agreement. (*Fair* v. *Moore*, 3 U. C. C. P. 484.)

The powers of a Municipal Corporation to have a common seal, to acquire and hold personal property or moveables, and alienate the same at pleasure, are too well known, and too thoroughly understood to need comment in this place. The right of a Corporation to acquire, hold and alienate real estate, generally depends upon the special provisions of the statute or charter. The power, when not otherwise provided, of a majority to bind the others by their acts, and also the exemption of individual members of the Corporation from personal responsibility will engage attention hereafter.

The next subject which it is proposed to consider is the corporate *name* of the Municipal Corporation. It is "The Corporation of the County, City, Town, Village, Township, or United Counties, or United Townships (*as the case may be*) of (*naming them*)." Thus, "The Corporation of the City of Toronto," and not as at one time "The Mayor, Aldermen, and Commonalty of the City of Toronto." So, "The Corporation of the County of Middlesex,)" and not as at one time "The Municipal Council or Municipality of the County of Middlesex," &c. The proper corporate name of a Municipal Corporation ought to be used on all occasions and in all places. But it has been decided that a by-law of a Municipal Council is valid if it appear on the face of it to have been enacted by a Municipal body having authority to make the by-law under the Municipal laws. (*In re Hawkins* v. *The Municipal Council of Huron, Perth and Bruce*, 2 U. C. C. P. 72; *Fisher* v. *The Municipal Council of Vaughan*, 10 U. C. Q. B. 492; *In re Barclay and the Municipal Council of Darlington*, 11 U. C. Q. B. 470). Slight variances in the use of corporate names, where substantially correct have been held immaterial even in matters of contract. (*Brock District Council* v. *Bowen*, 7 U. C. Q. B. 471; *The Trent and Frankford Road Company*

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shall be a body corporate, under the name of *The Provisional Corporation of the County of* (naming it.) (*c*)

6. The powers of every body corporate under this Act, shall be exercised by the Council thereof. (*d*) The Councils to exercise their corporate powers.

2.—POLICE VILLAGES.

7. The Police regulations of every Police Village shall be enforced through the Police Trustees. (*e*) Trustees in Police Villages.

NEW MUNICIPALITIES.

COUNTIES AND TOWNSHIPS.

8. The Inhabitants of every County or Union of Counties erected by Proclamation into an independent County or Union of Counties, and of every Township or Union of Townships erected into an independent Township or Union of Townships, and of every locality erected into a City, Town or Incorporated Village, and of every County or Township separated from any Incorporated Union of Counties or Townships, and of every County or Township or of the Counties or Townships if more than one, remaining of the Union after the separation, being so erected or separated after this Act takes effect, shall be a Body Corporate under this Act. (*f*) Extension of Corporate Municipalities.

NEW POLICE VILLAGES.

9. On the Petition of any of the Inhabitants of an unincorporated Village, the Council or Councils of the County or New Police Villages.

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v. *Marshall*, 16 U. C. C. P. 336. *The Corporation of the Township of Whitby* v. *Harrison*, 18 U. C. Q. B, 603; *Corporation of the County of Bruce* v. *Cromar*, 22 U. C. Q. B. 321.) It was however held differently as to the intitling of a rule in a proceeding against a Municipal Corporation. (*In re Sams* v. *The Corporation of Toronto*, 9 U. C. Q. B. 181.)

(*c*) See note *b*, to s. 4.

(*d*) Members of the corporation exceeding their corporate powers may, under certain circumstances, render themselves personally responsible for their acts. (*Thomas* v. *Wilson et al.*, 20 U. C. Q. B. 331; see also, *Municipal Council of East Nissouri* v. *Horseman*, 9 U. C. C. P. 189.)

(*e*) Police Villages are not Incorporated Villages (s. 422, sub-s. 1); hence, not having a corporate seal, they can have no by-laws, but regulations only.

(*f*) Section 1 applies to existing corporations, but this section seems to be prospective only, that is, applicable only to Municipalities *hereafter* to be erected, and applies to them by whatever authority created.

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Counties within which the village is situate, may, by By-law, erect the same into a Police Village, and assign thereto such limits as may seem expedient. (*g*)

NEW INCORPORATED VILLAGES.

When population 750, County Council may incorporate a new village and name place for first election, and a returning officer.

10. When the census returns of an unincorporated Village with its immediate neighbourhood, taken under the direction of the Council or Councils of the County or Counties in which the Village and its neighbourhood are situate, shew that the same contain over seven hundred and fifty inhabitants, and when the residences of such inhabitants are sufficiently near to form an Incorporated Village, then, on petition, by not less than one hundred resident freeholders and householders of the village and neighbourhood, of whom not fewer than one-half shall be freeholders, the Council or Councils of the County or Counties in which the village and neighbourhood are situate shall, by By-law, erect the Village and neighbourhood into an Incorporated Village, apart from the Township or Townships in which the same are situate, by a name and with boundaries to be respectively declared in the By-law, and shall name in the By-law the place for holding the first Election, and the Returning Officer who is to hold the same; (*h*) Provided, always, that:—

Proviso.

Area of Town or Village limited.

1. No Town or Village incorporated after the passing of this Act, the population of which does not exceed one thousand souls, shall extend over or occupy within the limits of the incorporation an area of more than five hundred acres of land. (*i*)

2. No Town or Village already, or hereafter incorporated, and containing a population exceeding one thousand souls, shall make any further addition to its limits or area, except in the proportion of not more than two hundred acres for each additional thousand souls, subsequent to the first thousand. (*j*)

(*g*) This clause of course does not apply to Villages either incorporated or already made Police Villages.

(*h*) This section, so far, is in effect the same as s. 10 of the repealed act, Con. Stat. U. C., cap 64. But what follows is new, and inserted with the intention of circumscribing Towns and Villages within reasonable limits, in order that those who occupy lands for farming purposes, may not be unnecessarily subject to Town or Village taxation.

(*i*) This sub-section is prospective. Provision is made by sub-s. 3, for existing Towns and Villages.

(*j*) This sub-section is also prospective. When the population does not exceed one thousand souls, the maximum area allowed is 500 acres,

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Existing Towns or Villages exceeding the area prescribed.

3. In the case of all Towns or Villages, now incorporated, whenever the area thereof exceeds the proportionate limit above prescribed, to wit, in all cases where the area exceeds the population of five hundred acres for the first thousand souls, and two hundred acres for each subsequent additional thousand, then in all such cases the said Towns or Villages shall not be permitted to make any further addition to their limits, until their population shall have reached a proportion as aforesaid to their present area. (*k*)

How population may be reckoned.

4. But in all cases the persons then actually inhabiting the land about to be included within the limits of any Town or Village, may, for the purpose of such extension only, be held and reckoned as among the inhabitants of such Town or Village. (*l*)

Reducing the area of Villages.

5. The County Council of any County or Union of Counties in Upper Canada, may, in their discretion, upon the application by petition of the Corporation of any Incorporated Village, whose outstanding obligations and debts do not exceed double the net amount of the yearly rate then last levied and collected therein, by By-law in that behalf, reduce the area of such Village by excluding from it lands used wholly for farming purposes: provided that such By-law shall define, by metes and bounds, the new limits intended for such Incorporated Village; and, provided also, that no Incorporated Village shall by any such change of boundaries be reduced in population below the number of seven hundred and fifty souls; and provided further, that the Municipal privileges and rights of such Village shall not thereby be diminished or otherwise interfered with as respects the remaining area thereof. (*m*)

Proviso.

Proviso.

Proviso.

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and by the sub-section here annotated, two hundred acres only can be allowed for each additional thousand persons beyond the first thousand.

(*k*) While in the case of existing Towns and Villages no provision is by this sub-section made for restricting their existing limits, provision is made as to future increase, &c., that it shall be in the proportions indicated, viz., five hundred acres for first thousand souls, and two hundred acres for each additional thousand.

(*l*) Not for all purposes, but for the purpose of "such extension *only*," which is an expression by no means free from doubt. But it is apprehended, the design is to exclude such persons from the obligation to pay Town or Village taxes; whether the language used is capable of that construction must be determined by the courts.

(*m*) Before a by-law can be legally passed under this sub-section, certain things are necessary—there must be a petition from the Cor-

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When the Village lies within two counties, how to be annexed to one of them by the Councils or Governor.

11. When the newly incorporated Village lies within two or more Counties, the Councils of the Counties shall, by By-law, annex the Village to one of the Counties; and if within six months after the petitions for the incorporation of the Village are presented, the Councils do not agree to which County the Village shall be annexed, the Wardens of the Counties shall memorialize the Governor in Council, setting forth the grounds of difference between the Councils; and thereupon the Governor shall, by proclamation, annex the Village to one of such counties. (*n*)

When by the Governor.

12. In case the Wardens do not within one month next after the expiration of the six months memorialize the Governor as aforesaid, then one hundred of the freeholders and housekeepers on the census list may petition the Governor to settle the matter, and thereupon the Governor shall, by proclamation, annex the Incorporated Village to one of the said Counties. (*o*)

Additions to Villages by Governor.

13. In case the Council of an Incorporated Village petitions the Governor to add to the boundaries thereof, the Governor may, by proclamation, add to the Village any part of the localities adjacent, which from the proximity of the streets or buildings therein, or the probable future exigencies of the Village, it may seem desirable to add thereto; provided always, that nothing herein contained shall be construed as authorizing any departure from the provisions of sub-sections one to five of section ten of this Act. (*p*)

Proviso.

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poration of the Incorporated Village, and when the petition is received, it is discretionary with, not obligatory upon, the County Council to grant the prayer thereof. If the outstanding debts and obligations of the Village exceed double the amount of the yearly rate then last levied and collected in the Village, there is no power to pass the by-law. If the effect of the by-law would be to reduce the population in the Village below seven hundred and fifty souls, the by-law cannot be legally passed. The by-law, when passed, must define by metes and bounds the new limits intended for the Village. If the Village be within the limits of two or more Counties, the same must be by by-law annexed to one or other of such Counties (s. 11.)

(*n*) The annexation is in the first instance left to the County Councils jointly. If they do not pass the necessary by-law within six months from the time the petition for incorporation is presented, the Wardens are to notify the Governor in Council thereof, and he is then to cause the annexation by proclamation.

(*o*) In case of the neglect or refusal of the Wardens to do as in the last section provided, a remedy is here given. The months intended are calendar months.

(*p*) The power of the Governor to add to the boundaries is only to

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ERECTION OF VILLAGES INTO TOWNS, AND TOWNS INTO CITIES.

Towns and Cities how formed: census.

14. A Census of any Town or Incorporated Village may at any time be taken under the authority of a By-law of the Council thereof. (*q*)

Town containing over fifteen thousand Inhabitants may be made a City; and Village containing over three thousand, a Town.

15. In case it appears by the Census return taken under any Act of Parliament, (*r*) or under any such By-law, (*s*) that a Town contains over fifteen thousand inhabitants, the Town may be erected into a City; and in case it appears by the return that an Incorporated Village contains over three thousand inhabitants, the Village may be erected into a Town; (*t*) but the change shall be made by means of and subject to the following proceedings and conditions:

1st—Notice to be given.

Firstly—The Council of the Town or Village, shall for three months after the Census return, insert a notice in some newspaper published in the Town or Village, or, if no newspaper be published therein, then the Council shall for three months post up a notice in four of the most public places in the Town or Village, and insert the same in a newspaper published in the County in which the Town or Village is situate, setting forth in the notice the intention of the Council to apply for the erection of the Town into a City, or of the Village into a Town, and stating the limits intended to be included therein;

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be exercised when the Council of the Incorporated Village petitions for the addition to its boundaries. The Governor in making the addition is to be influenced not only by the proximity of the streets and buildings in the locality proposed to be added, but may look to the probable future exigencies of the Village; subject, however, to the restrictions contained in sub-section one to five of section ten of this Act.

(*q*) This and the following provisions are designed to facilitate the formation of Villages into Towns, or Towns into Cities, whenever the population is sufficiently increased. The Census, it will be observed, may, under this section, be taken "at any time," but when taken, must be under the authority of a by-law of the Council of the Village.

(*r*) Such as under Con. Stat. Can., cap. 33, providing for the taking of a periodical census, is here referred to.

(*s*) *Any such By-law*, i. e., a by-law passed pursuant to the last section.

(*t*) The qualification, as it were, for the erection of a Town into a City is fifteen thousand inhabitants, and for the erection of an Incorporated Village into a Town is three thousand inhabitants.

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2nd—Proof of publication of notice and of census.

Secondly—The Council of the Town or Village shall cause the census returns to be certified to the Governor in Council, under the signature of the Head of the Corporation and under the Corporate Seal, and shall also cause the publication aforesaid to be proved to the Governor in Council, then, in the case of a Village, the Governor may, by Proclamation, erect the Village into a Town by a name to be given thereto in the Proclamation; (*u*)

Proclamation.

Village made a Town.

3rd—Existing debts to be adjusted in case of a Town to be made a City.

Thirdly—In case the application is for the erection of a Town into a City, (*v*)—the Town shall moreover pay to the County which it forms part, such portion, if any, of the debts of the County as may be just, or the Council of the Town shall agree with the Council of the County as to the amount to be so paid, and the periods of payment with interest from the time of the erection of the new City, or in case of disagreement the same shall be determined by arbitration under this Act; and the Council shall prove to the Governor in Council the payment, agreement or arbitration. (*w*)

4th—Governor may proclaim such Town a City.

Then, the Governor may, by Proclamation, erect the Town into a City, by a name to be given thereto in the Proclamation. (*x*)

Extension of limits.

16. The Governor may include in the new Town or City such portions of any Township or Townships adjacent thereto and within the limits mentioned in the aforesaid notice (*a*) as from the proximity of the streets or buildings, or the probable future exigencies of the new Town or City, the Governor in Council may consider it desirable to attach thereto. (*b*)

(*u*) This and the preceding sub-section apply both to Towns and Incorporated Villages.

(*v*) This sub-section applies to Towns only. It is an additional condition precedent to the application. It is rendered necessary in the case of a Town, as distinguished from a Village, because when a Town becomes a City, it is no longer like a Village becoming a Town, still within the jurisdiction of the Municipal Council of the County, as respects debts and rates and representation by Reeves in the County Council.

(*w*) Three methods are provided. *First*, actual payment. *Second*, a mutual agreement as to the amount and time of payment. *Third*, an arbitration in case of disagreement.

(*x*) The name, it will be observed, must be given in the Proclamation.

(*a*) *Aforesaid notice.* The notice intended is that mentioned at the end of subsection 1 of the last section, and shows how important it is for the notice to express clearly the limits of the Town or City, as proposed by the Council.

(*b*) See note *p* to s. 13.

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17. The Governor may divide the new Town or City into Wards, with appropriate names and boundaries, but no Town shall have less than three Wards, and no Ward less than five hundred inhabitants. (*c*)

18. In case any tract of land so attached to the Town or City belonged to another County, the same shall thenceforward for all purposes cease to belong to such other County, and shall belong to the same County as the rest of the Town or City. (*d*) Lands detached from Counties.

NEW DIVISION OF WARDS IN CITIES AND TOWNS.

19. In case two-thirds of the members of the Council of a City or Town do in Council (*e*) before the fifteenth day of July in any year (*f*) pass a resolution (*g*) affirming the expediency of a new division into Wards being made of the City or Town, or of a part of the same, (*h*) either within the existing limits or with the addition of any part of the localities adjacent, which from the proximity of streets or buildings therein, or the probable future exigencies of the City or Town, it may seem desirable to add thereto respectively, the Governor may, by proclamation, divide the City or Town, or such part thereof into Wards, as may seem expedient, and may add to the City or Town any part of the adjacent Township or New division of Wards in Cities and Towns. Extension of City.

(*c*) It will be observed that this section has no reference whatever to Incorporated Villages. It will also be observed that no Town having less than 1500 inhabitants can be divided into Wards under this section.

(*d*) Towns and Cities for some purposes continue parts of the county in which situate, and this provides for the annexation for all purposes of tracts detached under the operation of the foregoing section

(*e*) This it is apprehended means a majority of two-thirds of the *whole* number of Councillors, and not merely two-thirds of a less number present at the meeting, though the number present be sufficient to form a quorum for ordinary business.

(*f*) It ought to be observed that the time is here expressly limited. If the act authorised be done after the time limited, it would be a nullity.

(*g*) A Municipal Council ordinarily does public acts through the instrumentality of a by-law. No by-law is, however, here necessary. A formal resolution is all that is required. One difference between a by-law and a resolution is that the former must bear the corporate seal, and the latter need not do so.

(*h*) A change in one or more Wards of a City or Town, without disturbing the remaining Wards, is contemplated.

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Townships, which the Governor in Council on the grounds aforesaid considers it desirable to attach thereto. (*i*)

LIBERTIES IN CITIES ABOLISHED.

No liberties.

20. There shall be no Liberties or outer Wards in Cities.(*j*)

EXISTING BY-LAWS CONTINUED.

By-laws to continue in Cities, Towns and Villages, etc.

21. In case a Village be incorporated, or an Incorporated Village or Town with or without additional area, be erected into a Town or City, the By-laws in force therein respectively shall continue in force until repealed or altered by the Council of the new Corporation; (*k*) but no such By-laws shall be repealed or altered, unless they could have been or can be legally repealed or altered by the Council which passed the same. (*l*)

When not to be repealed.

And when the limits of a Municipality are extended.

22. In case an addition be made to the limits of a Municipality, the By-laws of the Municipality shall extend to the additional limits, and the By-laws of the Municipality from which the same has been detached shall cease to apply to the addition, except only By-laws relating to roads and streets,

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(*i*) This admits of tracts of adjacent Townships being added to Cities or Towns and annexed to specific Wards. It would seem to be in the discretion of the Governor to fix or define the Wards, or make any necessary alterations therein, but it is probable that the wishes of the Town or City Council would be complied with by him. It may therefore be important that the resolution should explicitly state the changes or additions deemed expedient by the Council. No published or other notice of the intended application is required.

(*j*) Under former statutes, there were liberties and outer Wards attached to Cities; but it is believed that all such have been, before the passing of this statute, incorporated in the Cities, and made inner Wards thereof, and it is not deemed expedient to authorize either liberties or outer Wards for the future.

(*k*) This section relates to Villages newly incorporated, to incorporated Villages made Towns, and to Towns made Cities. An unincorporated Village is subject to the jurisdiction and by-laws of the Township and County Councils. Villages and Towns incorporated are themselves Municipalities, independent of Township Councils. The design of this section is to continue the by-laws of the Township Council in a Village newly incorporated, until the by-laws are altered by the Council of the Village. So also the by-laws of an incorporated Village when it becomes a Town, and of a Town when it becomes a City, are continued until duly repealed.

(*l*) The object of this part of the section is to prohibit the repeal by the new Council of by-laws securing the payment of debentures, &c., which could not be repealed by the old Municipal Council.

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and these shall remain in force until repealed by By-laws of the Municipality added to. (*m*)

LIABILITY OF DEBTS TO CONTINUE.

Liability to debts to continue.

23. In case of the formation of an Incorporated Village, or of the erection of an Incorporated Village into a Town, or of a Town into a City, the Village, Town or City shall remain liable to all the debts and liabilities to which the Village or Town was previously liable, in like manner as if the same had been contracted or incurred by the new Municipality. (*n*)

And in case of an extension of limits

24. After an addition has been made to a Village, Town or City, the Village, Town or City shall pay to the Township or County from which the additional tract has been taken, such part, (if any,) of the debts of the Township or County, as may be just; (*o*) and in case the Councils do not, within three months after the first meeting of the Council of the Municipality to which the addition has been made, agree as to the sum to be paid, or as to the time of payment thereof, the matter shall be settled by arbitration under this Act. (*p*)

(*m*) The object of this section is to extend the existing by-laws of a Municipality to tracts of land added to the Municipality after the passing of the by-laws, and to indicate the exemption of such tracts of land from the operation of the by-laws of the Municipality to which they formerly belonged. Even the operation of the by-laws of the old Municipality creating debts, &c., are thus got rid of; but by-laws relating to roads or streets, within the limits of such tracts, are continued until repealed by the Council acquiring jurisdiction over the same. With regard to by-laws creating debt, secs. 23 and 24 of this act ought to be read in connexion with the one here annotated.

(*n*) This strengthens the provisions contained in previous sections for the protection of creditors. At one time Junior Townships and Junior Counties only after separation were still made liable to existing debts. The present section extends the liability to a newly erected Incorporated Village, *i. e.*, renders it still liable for debts of the Township at the time of the incorporation of the Village. A Village made a Town, of course remains subject to its debts, being in effect the same Municipality advanced to a Town. So if a Town be erected into a City. The effect of this section is that a village newly incorporated remains liable to pre-existing township debts, and towns and cities respectively remain liable for the debts contracted by them while they were incorporated villages or towns.

(*o*) The effect of sec. 22 is to exempt tracts of land annexed from the debts of the Municipality to which they formerly belonged; and the effect of this section, read in connection with it, is to render the Municipality to which the annexation is made liable to compensate the former Municipality a reasonable proportion of the pre-existing debts.

(*p*) Resort is to be had to arbitration only in case the Councils do not, within three months after the first meeting of the Municipality

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COUNCILS AND OFFICERS TO CONTINUE.

Former Councils and Officers to exercise jurisdiction over new Municipalities, &c., until new Councils are organized.

25. In case any place be erected into an incorporated Village, or an incorporated Village into a Town, or a Town into a City, the Council and the members thereof having authority in the place or Municipality immediately before such erection, shall, until the Council for the newly erected Corporation be organised, continue to have the same powers as before; and all other Officers and Servants of the place or Municipality shall, until dismissed or until successors be appointed, continue in their respective offices, with the same powers, duties and liabilities as before. (*q*)

WITHDRAWAL OF TOWNS FROM THE JURISDICTION OF THE COUNTY.

Town may be withdrawn from jurisdiction of County by By-law on certain conditions.

26. The Council of any Town may pass a By-law to withdraw the Town from the jurisdiction of the Council of the County within which the town is situated, upon obtaining the assent of the electors of the Town to the By-law in manner provided by this Act, (*r*) subject to the following provisions and conditions:

Amount to be paid by Town towards expenses of administration of justice to be settled.

1. After the final passing of the By-law, the amount which the Town is to pay to the County for the expenses of the administration of Justice, the use of the Gaol, and the erection and repairs of the Registry Office, and for providing books for the same, as well as for the then existing debt of the County, if not mutually agreed upon, shall be ascertained by arbitration under this Act; and the agreement or award shall distinguish the amounts to be annually paid for the said expenses, and for the then debt of the County, and the number of years the payments for the debt are to continue; (*s*)

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to which the addition has been made, agree as to the sum to be paid, or as to the time of payment.

(*q*) This continues the jurisdiction of the Township Council and officers, &c., over a newly incorporated Village, and so of the Council and officers of Villages and Towns respectively, until the organization of the first Council of the new Municipality.

(*r*) The exercise of the powers of the Council is made subject to the assent of the electors, and even with the assent of the electors is further subject to the provisions and conditions in this section also contained. The effect of the withdrawal is hereafter explained, (see note *v*).

(*s*) The amount to be paid by the Town to the County is made up of the following items:—

1. Expenses of Administration of Justice.
2. Use of the Gaol.
3. Erection and repairs of Registry Office.
4. Books for the same.
5. The then existing debt of the County.

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2. In adjusting their award, the arbitrators shall, among other things, take into consideration the amount previously paid by the Town, or which the Town may be then liable to pay, for the construction of roads or bridges by the County, without the limits of the town; and also what the County may have paid, or be liable to pay, for the construction of roads or bridges within the Town; and they shall also ascertain and allow to the Town the value of its interest in all County property except roads and bridges within the Town; (*t*) Matters to be considered in settling the same.

3. When the agreement or award has been made, a copy of the same and of the By-law, duly verified by affidavit, shall be transmitted to the Governor, who shall thereupon issue his proclamation withdrawing the Town from the jurisdiction of the Council of the County; (*u*) Copy of agreement to be sent to the Governor. Proclamation.

4. After the proclamation has been issued, the offices of Reeve and Deputy Reeve or Deputy Reeves of the Town shall cease; and no By-law of the Council of the County shall have any force in the Town, except so far as relates to the care of the Court House and Gaol, and other County property in the Town; and the Town shall not thereafter be liable to the County for, or be obliged to pay to the County or into the County Treasury, any money for County debts or other purposes, except such sums as may be agreed upon or awarded as aforesaid; (*v*) Effect of such Proclamation.

5. After the lapse of five years from the time of the agreement or award, or such shorter time as may be stated in the agreement or award, a new agreement or a new award may be New agreement after five years.

(*t*) The rule laid down is a fair one. Where the Town has contributed towards building roads or bridges outside of its limits, credit is to be given; but when the roads, &c., are within the limits, it is to be debited with a fair proportion of the outlay. In addition, the Town is to receive credit for the value of its interests in all County property, except roads and bridges within the Town.

(*u*) There is no time limited in any year within which the application to the Governor General is to be made.

(*v*) The effects of withdrawal are here explained.

1. The offices of Reeve and Deputy Reeve necessary only as representatives of the Town in the County Council are to cease.
2. No by-law of the County (except so far as relates to the care of the Court House and Gaol, and other County property in the Town) is to have any force in the Town.
3. The Town is not to be liable to the County for, or be obliged to pay into the County Treasury, any moneys (except as agreed upon or awarded) for County debts or other purposes.

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made, to ascertain the amount to be paid by the Town to the County for the expenses of the Administration of Justice. (*w*)

Property after withdrawal.

6. After the withdrawal of a Town from the County, all property theretofore owned by the County, except roads and bridges within the Town, shall remain the property of the County. (*x*)

TOWNSHIPS.

Erection of New Townships.

New Township beyond the limits of Incorporated Counties may be attached to a County by proclamation

27. In case a Township be laid out by the Crown in territory forming no part of an Incorporated County, the Governor may by proclamation erect the Township, or two or more of such Townships, lying adjacent to one another, into an Incorporated Township or Union of Townships, and annex the same to any adjacent Incorporated County; and the proclamation shall appoint the Returning Officer who is to hold, and the place for holding, the first election in the Township or Union of Townships. (*a*)

Separation of United Townships.

Junior Township containing 100 freeholders, &c., to become a separate Municipality.

28. When a Junior Township of an Incorporated Union (*b*) of Townships has one hundred resident freeholders and householders on the assessment roll as last finally revised and passed, (*c*) such Township shall, upon the first day of January then next thereafter, (*d*) become separated from the Union. (*e*)

(*w*) This is not to be understood as referring merely to the expenses of the administration of *criminal* justice: for they are to be defrayed by the Province. (Con. Stat. U. C. cap. 120.)

(*x*) A fair result of the preceding subsections.

(*a*) At one time no Township could, for the purposes of election and municipal government, be organized until it contained a certain population. Here no such requirement is made. The Governor is enabled by proclamation to incorporate new Townships, separately or in unions.

(*b*) *Resident freeholders and householders.* There must be at least one hundred residents, and these residents must be either freeholders or householders, it matters not in what proportion. Females are not in terms excluded, though it is doubtful whether the law intends them to be included.

(*c*) The assessment roll is under the assessment act revised and finally passed by the Court of Appeal constituted by that act. The roll so revised and passed is the one here mentioned.

(*d*) The day of separation is postponed until the new year, that is, till the period is at hand for the yearly election of Municipal Councillors.

(*e*) When the junior Township attains the required population, the separation is to take place *by operation of law.* No by-law or proclamation is made necessary.

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29. In case a Junior Township has at least fifty but less than one hundred resident freeholders and householders (*f*) on the last revised assessment roll, (*g*) and two-thirds of the resident freeholders and householders of the Township, petition the Council of the County to separate the Township from the Union to which it belongs; (*h*) and in case the Council considers the Township to be so situated, with reference to streams or other natural obstructions, that its inhabitants cannot conveniently be united with the inhabitants of an adjoining Township for Municipal purposes, the Council may, by By-law separate the same from the Union, (*i*) and the By-law shall name the Returning Officer who is to hold, and the place for holding the first election under the same. (*j*)

In what case a Junior Township containing less than 100, but exceeding 50, may be separated, and how.

ANNEXATION OF GORES.

30. The Governor may, by proclamation, annex to any Township, or partly to each of more Townships than one, any Gore or small tract of land lying adjacent thereto and not forming part of any Township, and such Gore or tract shall thenceforward for all purposes form part of the Township to which it is annexed. (*k*)

The Governor may annex Gores to adjacent Townships.

ANNEXATION OF NEW TOWNSHIPS.

31. In case a Township be laid out by the Crown in an incorporated County or Union of Counties; or in case there is any Township therein not incorporated and not belonging to an incorporated Union of Townships,—the Council of the County or United Counties shall, by By-law unite such Town-

New Townships, &c., within the limits of Incorporated Counties, to be united to adjacent

(*f*) See note *b* to preceding section.

(*g*) See note *c* to same.

(*h*) The petition may, under the circumstances stated, be made at any time of the year.

(*i*) The power of the County Council to interfere is only when it considers the Township to be so situated with reference to streams or other natural obstructions that its inhabitants cannot conveniently be united for municipal purposes with the inhabitants of an adjoining township.

(*j*) It is to be noticed that the By-law is to fix the place for holding the first election of Councillors and to name the Returning Officer, neither of which is mentioned in the preceding section.

(*k*) This was originally taken from Statute 12 Vic., cap. 11, sec. 2, which authorized such annexation for all purposes, including, of course, municipal purposes. The proclamation must, it is presumed, as usual in the case of Crown proclamations, be under the Great Seal of the Province. (*Keyley* v. *Manning*, Cro. Car. 180.)

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Townships, and how.

ship for Municipal purposes, to some adjacent Incorporated Township or Union of Townships in the same County, or Union of Counties. (*l*)

Townships not incorporated or united may be formed into unions, and how.

32. In case of there being at any time in an Incorporated County or Union of Counties two or more adjacent Townships not incorporated and not belonging to an Incorporated Union of Townships; and in case such adjacent Townships have together not less than one hundred resident freeholders and householders within the same,—the Council of the County or Union of Counties may, by By-law, form such Townships into an independent Union of Townships. (*m*)

Townships in different Counties.

33. In case the united Townships are in different Counties, the By-law shall cease to be in force whenever the union of the Counties is dissolved. (*n*)

SENIORITY OF TOWNSHIPS.

Seniority of Townships how regulated.

34. Every Proclamation or By-law forming a Union of Townships shall designate the order of seniority of the Townships so united, and the Townships of the Union shall be classed in the By-law according to the relative number of freeholders and householders on the last revised assessment roll. (*o*)

(*l*) There are in some Counties tracts of land not surveyed or laid out in Townships, and this section requires the County Council of any such County to unite new townships when laid out with some adjacent Township or Townships, in order that the inhabitants may at once enjoy municipal rights and be subject to municipal liabilities.

(*m*) Under this section Unions may be formed of two or more *new* townships, instead of annexing them to *old* townships. This can only be done when the joint population of resident freeholders and householders is not less in number than one hundred.

(*n*) No case can arise under this section, unless the Union have been made by the Council of United Counties of Townships in different Counties of the Union. When such has been done, and the Counties afterwards become separated, provision is made for the separation of the United Townships. The fact that the by-law is in such an event to "cease to be in force," as near as may be restores the Townships to the situation in which they were before the by-law passed.

(*o*) The order of seniority of United Townships is to be declared in the Proclamation or By-law, as the case may be, and the seniority is to be governed by population, so that the more populous Township is to be the senior.

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COUNTIES.

New Counties.

New Counties, how formed by Proclamation and annexed or united.

35. The Governor may, by Proclamation, form into a new County, any new Townships not within the limits of an Incorporated County, and may include in the new County one or more unincorporated Townships or other adjacent unorganized Territory, (defining the limits thereof) not being within an Incorporated County, and may annex the new County to any adjacent Incorporated County; or in case there is no adjacent Incorporated County, or in case the Governor in Council considers the new County, or any number of such new Counties lying adjacent to one another and not belonging to an Incorporated Union, so situated that the inhabitants cannot conveniently be united with the inhabitants of an adjoining Incorporated County for Municipal purposes, the Governor may, by the Proclamation, erect the new County, or new adjacent Counties, into an independent County or Union of Counties, for the said purposes, and the Proclamation shall name the new County or Counties. (*p*)

Seniority of United Counties, how regulated.

36. In every Union of Counties, the County in which the County Court House and Gaol are situate, shall be the Senior County, and the other County or Counties of the Union shall be the Junior County or Counties thereof. (*q*)

Laws Applicable to.

Laws applicable to union of Counties.

37. During the Union of Counties, all Laws applicable to Counties (except as to representation in Parliament and Registration of titles) shall apply to the Union as if the same formed but one County. (*r*)

Venue in.

Venue how laid in unions of Counties.

38. In the case of United Counties, the venue in any judicial proceedings shall be laid in the proper County of the

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(*p*) The provisions of this section are taken from sec. 35 of Con. Stat. U. C., cap. 54. They facilitate the formation of Counties and Unions of Counties in newly organized tracts of land, without the necessity of express Acts of Parliament.

(*q*) There is not only seniority among United Townships, but seniority among United Counties. While among the former seniority is to be determined by population, among the latter it is to be determined by the situation of the County Court House and Gaol. This was the old law.

(*r*) The corporate name will be "The Corporation of the United Counties of," &c. (naming the same), s. 4.

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Union (naming it) and describing it as one of the United Counties of ———, and in such case the Jury for the trial of any issue, Civil or Criminal, or the assessment of any damages, shall be summoned from the body of the United Counties. (*s*)

ERECTION OF PROVISIONAL CORPORATIONS AND SEPARATION OF JUNIOR COUNTIES.

PRESIDING MEMBER—FIRST MEETING—COUNTY TOWN.

Provisional separation of United Counties by Proclamation appointing place of meeting and presiding officer;

39. When the Census Returns taken under an Act of Parliament, or under the authority of a By-law of the Council of any United Counties, show that the Junior County of the Union contains seventeen thousand inhabitants, or more, then, if a majority of the Reeves and Deputy Reeves of such County do, in the month of February, pass a resolution affirming the expediency of the County being separated from the Union; and if in the month of February in the following year, a majority of the Reeves and Deputy Reeves transmit to the Governor in Council a petition for the separation, and if the Governor deems the circumstances of the Junior County such as to call for a separate establishment of Courts and other County institutions, he may, by Proclamation setting forth those facts, constitute the Reeves and Deputy Reeves for the County a Provisional Council, and in the Proclamation appoint a time and place for the first meeting of the Council, and therein name one of its Members to preside at the meeting, and also, therein determine the place for and the name of the County Town. (*t*)

and County Town.

Who to preside till Provisional Warden chosen.

40. The member so appointed shall preside in the Council until a Provisional Warden has been elected by the Council from among the members thereof. (*u*)

(*s*) A declaration laying the venue in the United Counties of, &c., (not naming the particular county) was held bad on special demurrer. (*Nelson Boad Co.* v. *Bates*, 4 U. C. C. P. 281.) A writ of summons was sued out before the separation of the County of Ontario from the United Counties of York and Peel, directing defendant to appear in the United Counties of York, Ontario and Peel. It was not served until after the separation, and the venue in the declaration was laid in the three United Counties. The defendant thereupon demurred. *Held*, not a frivolous demurrer. (*Plaxton et al.* v. *Smith*, 1 U. C. Prac. Rep. 228.)

(*t*) The provision made for determining the County Town will, it is hoped, be found sufficient to avoid the difficulties and delays that have been heretofore experienced in such cases.

(*u*) See s. 135.

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PROVISIONAL OFFICERS.

41. Every provisional Council shall from time to time appoint a Provisional Warden, a Provisional Treasurer, and such other Provisional Officers for the County, as the Council deems necessary. (*v*) Appointment of Provisional Warden, &c.

42. The Provisional Warden, shall hold office for the Municipal year for which he is elected. (*w*) His term of office;

43. The Treasurer and other officers so appointed shall hold office until removed by the Council. (*x*) And of Treasurer, &c.

PURCHASE OF PROPERTY.

44. Every Provisional Council may acquire the necessary property at the County Town of the Junior County on which to erect a Court House and Gaol, and may erect a Court House and Gaol thereon, adapted to the wants of the County and in conformity with any statutory or other rules and regulations respecting such buildings, and may pass By-laws for such purposes. (*a*) Provisional Council may acquire lands for Gaols and Court Houses.

POWERS OF THE UNION NOT TO BE INTERFERED WITH.

45. The powers of a Provisional Council shall not interfere with the powers of the Council of the Union, and any money raised by the Provisional Council in the Junior County shall be independent of the money raised therein by the Council of the Union. (*b*) Powers of Provisional Council not to interfere with powers of the union.

DEBTS AND ASSETS OF THE UNION.

46. After a Provisional Council has procured the necessary property and erected thereon the proper buildings for a Agreement as to debts upon dissolution.

(*v*) The mode of appointment is not here specified; but all such appointments had better be by by-law, under corporate seal.

(*w*) The primary duty of the Warden is to preside at the meetings of the County Council. He needs no greater qualification than any other member of the Council. His selection is made from the Reeves and Deputy Reeves who compose the Council.

(*x*) Their holding is during pleasure. They may, it is presumed, be removed either by by-law or resolution.

(*a*) Power is given to the Provisional Council—

1. To acquire the necessary property on which to erect a Court House and Gaol.

2. To erect a Court House and Gaol; and these powers should be exercised by by-laws.

(*b*) The power to raise money is here implied. That power should be exercised by by-law of the Provisional Council.

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Court House and Gaol, the Council may enter into an agreement with the senior or remaining County or Counties for payment to such County or Counties of any part of the debts of the Union as may be just, and for determining the amount to be so paid and the times of payment. (*c*)

When Provisional Councillors shall not vote.

47. No member of the Provisional Council shall vote or take any part in the Council of the Union on any question affecting such agreement or the negotiation therefor. (*d*)

Arbitrament

Payment of debts upon dissolution.

Debt to bear interest.

Proviso: If there are no debts, as to division of property.

48. In case the Councils do not then agree as to the amount or periods of payment, the matter shall be settled between them by arbitration under this Act, (*e*) and the junior County shall pay to the senior or remaining County or Counties of the Union the amount so agreed upon or settled (*f*) and such amount shall bear interest from the day on which the Union is dissolved, and shall be provided for like other debts, by the Council of the junior County after being separated: (*g*) provided always, that if no such debts exist and the Councils do not agree as to the division of the property belonging to the United Counties, that then an arbitration shall take place within twelve months after the separation of such Counties has taken place, and the arbitrators shall take into consideration and allow to the junior County the fair proportion of the value of any personal property of the United Counties, which by the separation of the Counties becomes the exclusive property of the senior County. Provided also,

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(*c*) It is necessary that the Gaol and Court Houses should be erected before an agreement respecting the debts of the Union is to be entered into, and then and not till then the County about to be separated is to arrange with the remaining County or Counties for a due proportion of the joint debts. In case the Councils do not agree at to the amount or periods of payment, they are to arbitrate.

(*d*) The reason is plain. Though the members of the Provisional Council are also members of the Council of the Union, yet in this negotiation, the matter lies between the Provisional Council on the one hand and the Council of the Union on the other. And the Provisional Council being for this purpose an independent and interested body, it follows that the interest of the Union, which is virtually the interest of the senior or remaining County or Counties should be protected by the Councillors of the senior or remaining County or Counties.

(*e*) See section 353 *et seq.*

(*f*) The sum to be paid by the junior to the senior or remaining County or Counties, is "the amount so agreed upon *or* settled," that is, either the amount agreed upon between the Counties without arbitration, or the amount settled by arbitration.

(*g*) Nothing is here said as to the rate of interest.

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that the provisions in this section contained shall not apply to any County where proceedings have been commenced or taken, previous to the passing of this Act, for separating such County. (*h*)

Proviso, as to cases before this Act.

GOVERNOR TO APPOINT JUDGES, &c.

49. After the sum to be paid by the junior County to the senior or remaining County or Counties has been paid or ascertained by agreement or arbitration, the Governor in Council shall appoint for the junior County, a Judge, a Sheriff, one or more Coroners, a Clerk of the Peace, a Clerk of the County Court, a Registrar, and at least twelve Justices of the Peace, and shall provide, in the commission or commissions, that the appointments are to take effect on the day the Counties become disunited. (*i*)

Terms and time of separation.

Judge, &c., to be appointed.

50. The Office for the Registry of Deeds shall be kept in the County Town in like manner as in other Counties. (*j*)

Registrar.

WHEN A JUNIOR COUNTY MAY BE SEPARATED.

51. After such appointments are made, the Governor shall, by proclamation, separate the Junior County from the Senior or remaining County or Counties, and shall declare such separation to take effect on the first day of January next after

United Counties, when and how to be separated by Proclamation.

(*h*) The two last provisos of this section are new, the latter having been introduced by the amending act passed in the same session, cap. 52. Where there are no debts at the time of the separation, the only thing remaining for consideration is the division of the property in which both are jointly interested. The arbitrators when making the division are to take into consideration and allow to the junior County the fair proportion of the value of any personal property of the Union which by the separation becomes the exclusive property of the senior County. This however is not to apply to any County where proceedings for a separation were commenced or taken previous to the passing of this Act.

(*i*) It is not necessary for the Governor to defer making the appointments indicated till payment. It is quite sufficient for the purpose that the sum be paid by the junior to the senior County has been ascertained by agreement or arbitration.

(*j*) It is by the Statute 29 Vic. cap. 24, s. 4. enacted that there shall be a separate Registry Office in every Riding, Union of Counties, and City in Upper Canada, wherein at the time of the passing of the Act a separate Registry Office was established, and that whenever any County should be separated for judicial purposes from a Union of Counties, or a new County formed and set apart for judicial purposes, there shall be a separate Registry Office established therein by the Governor in Council, which office shall be kept in the County Town in like manner as in other County Towns.

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the end of three months from the date of the Proclamation; (*k*) and on that day the Courts and officers of the Union shall cease to have any Jurisdiction in the Junior County; (*l*) and the property of the Corporation of the Union situate in the Junior County shall become the property of the Corporation of the Junior County, and the property situate in the remaining County or United Counties shall be the property of the Corporation of the remaining County or United Counties; (*m*) Provided always, that nothing herein contained shall prevent the Sheriff of any such senior county from proceeding upon and completing the execution or service within the Junior County of any writ of mesne or final process in his hands at the time of such separation, or of any renewal thereof or of any subsequent or supplementary writ in the same cause, or in the case of executions against lands from executing all necessary deeds and conveyances relating to the same, and the acts of all such Sheriffs in that behalf, shall be and be held and construed to be legal and valid in the same manner and to the same extent as if no separation had taken place, but no further. (*n*)

Property how divided.

Proviso as to execution and service of writs.

(*k*) It will be seen that the separation does not necessarily take place on the first day of January next after the proclamation, but next after "the end of three calendar months from the date of the proclamation." So that if three calendar months of the expiring year do not remain after the date of the proclamation, the separation will be deferred until the first day of January in the second year, reckoned from the date of the proclamation.

(*l*) This is a very important provision. Every word of it deserves attention. It is, that on the day when the Junior County becomes separate and independent "the Courts *and officers* of the Union shall *cease* to have any jurisdiction in the Junior County." Who are "officers of the Union?" Is a commissioner for taking affidavits, appointed by the Courts, such an officer? Though there is room for argument that he is not, the better opinion would appear to be that he is. (See *McWhirter* v. *Corbett*, 4 U. C. C. P. 203; *Carter* v. *Sullivan et al.*, Ib. 298; *Glick* v. *Davidson*, 15 U. C. Q. B. 591; *Fleming* v. *McNaughten*, 16 U. C. Q. B. 194) Then the jurisdiction of all such officers after the separation, as to the County separated, is to *cease*.

(*m*) The property here meant, it is presumed, is real property. The ownership of it is made to depend on its situation. If within the Junior County, the property of the Junior County. So if within the senior County, the property of the Senior County.

(*n*) This proviso is new and intended to meet difficulties which, under the old law, presented themselves. It was in one case held that the sureties of a Sheriff of United Counties were not liable after separation for his conduct in office as Sheriff of the Union County. (*Thompson et al.* v. *McLean et al.* 17 U. C. Q. B. 495.)

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Place of trial after dissolution of unions, to be as ordered by the Court of a Judge.

52. If upon the dissolution of a Union of Counties there is pending an action, information, indictment, or other judicial proceeding in which the Venue is laid in a County of the Union, the Court in which the action, information or indictment is pending, or any Judge who has authority to make orders therein may, by consent of parties, or on hearing the parties upon affidavit, order the Venue to be changed to the new County, (*o*) and all records and papers to be transmitted to the proper officers of such County, and in the case of any such indictment found at any Court of Oyer and Terminer and General Gaol Delivery, any Judge of either of the Superior Courts of Common Law, may make the order. (*p*)

If no special order is made.

53. In case no such change be directed, all such actions, informations, indictments and other judicial proceedings shall be carried on and tried in the Senior County. (*q*)

COURTS IN.

Place for holding Courts after separation.

54. All Courts of the Junior County required to be held at a place certain, (*r*) shall be held in the County Town of the Junior County. (*s*)

PERSONS IN PRISON.

Indictable offences, how to be disposed of.

55. Any person charged with an indictable offence, who, at the time of the disuniting of a Junior from a Senior County, is imprisoned on the charge in the gaol of the Senior County, or is under bail or recognizance to appear for trial at

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(*o*) The section applies only to pending actions, informations, indictments, or other judicial proceedings, &c., *to be tried by a jury.* The reason is, that in any such proceeding, the jury is to be summoned from the United Counties, or separated County, as the case may be.

(*p*) It seems to be in the discretion of the Court or Judge to grant or refuse the application.

(*q*) The senior County is that in which the Court House and Gaol, &c., are situate. (Sec. 36.) The object of this section is to fix the County in which pending proceedings are to be continued, when no order has been made under the preceding section for changing the venue to the junior County after its separation. No provision is made for the change of the style of venue. If no change be made, of course the jury would be summoned from the senior or remaining County or Counties; so all other proceedings connected therewith would be conducted therein.

(*r*) Such as Assizes, Quarter Sessions, County Courts, and Surrogate Courts, but not Division Courts, unless it be the Court for the Division in which the County Town is situate.

(*s*) This of course means after the junior County has become an independent County by the separation.

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any Court in the Senior County, and against whom no indictment has been found before the disunion takes place, shall be indicted, tried and sentenced in the Senior County, (*t*) unless a Judge of one of the Superior Courts of Common Law orders the proceedings to be conducted in the Junior County, in which event the prisoner or recognizance (as the case may be) shall be removed to the latter County, and the proceedings shall be had therein; (*u*) and when in any such case the offence is charged to have been committed in a County other than that in which such proceedings are had, the venue may be laid in the proper County, describing it as "formerly one of the United Counties of:"(*v*) &c.

PERSONS ON BAIL.

Proceedings in civil cases under bailable process.

56. Any person arrested or held to bail under civil process, before the separation of a junior from a senior County, and liable to be imprisoned, shall be so imprisoned in the Gaol of the County in which he was arrested, and all proceedings in any suit or action in which any person was so arrested or held to bail, and all proceedings after judgment founded on the arrest or holding to bail, shall be carried on as if the arrest or holding to bail had taken place in such County as a sepa-

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(*t*) Offences which may be made the subject of indictment and are below the crime of treason may be divided into two classes—felonies and misdemeanors. The term felony appears to have been long used to signify the degree or class of crime committed, rather than the penal consequence or forfeiture occasioned by the crime, according to its original signification. The proper definition of it, however, as stated by an excellent writer, recurs to the subject of forfeiture, and describes the word as signifying an offence which occasions a total forfeiture of either lands or goods or both, at common law; and to which capital or other punishment may be superadded, according to the degree of guilt. With regard to felonies created by statute, it seems clear that not only those crimes which are made felonies in express words, but also all those which are decreed to have or undergo judgment of life and member by any statute, become felonies thereby, whether the word "felony" be omitted or mentioned. The word "misdemeanor," in its usual acceptation, is applied to all those crimes and offences for which the law has not provided a particular name, and they may be punished according to the degree of the offence, by fine, or imprisonment, or both. A misdemeanor is in truth any crime less than a felony; misdemeanors comprehending all indictable offences which do not amount to felony, as perjury, battery, libels, conspiracies and public nuisances. (Russell on Crimes, i. 44.)

(*u*) By sec. 52, the power to change the venue can only be exercised where the indictment, &c., is *pending*. This section impliedly authorises a change before indictment found.

(*v*) The form of venue here given ought to be carefully observed.

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rate County, and in case the proceedings are to be had in the Junior County, all the records and papers relative to the case shall be transmitted to the proper officer of the Junior County. (*a*)

PERSONS ON GAOL LIMITS.

Privileges of persons admitted to Gaol limits saved on dissolution.

57. In case a debtor or other person be (in manner prescribed by law) admitted to the Gaol limits of a Union of Counties, and the Union be afterwards dissolved, or one or more Counties be separated from the Union, such person or debtor may notwithstanding travel and reside in any portion of the said Counties, as if no dissolution or separation had taken place, without committing a breach of any bond or the condition thereof, or a forfeiture of any security given for the purpose of obtaining the benefit of such limits, (*b*) and in case any such person after the dissolution of the Union be surrendered or ordered to be committed to close custody, he shall be surrendered or committed to the Sheriff of the County in which he was arrested and be imprisoned in the Gaol thereof. (*c*)

WHEN PROVISIONAL COUNCILS, OFFICERS, &C., TO BECOME ABSOLUTE.

Officers and property, &c., continued.

58. When a Junior County is separated from a Union of Counties, the head and members of the Provisional Council of the Junior County, and the officers, by-laws, contracts,

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(*a*) Provision is here made for the case of a person arrested or held to bail on *civil* process; and if imprisoned, it is not only declared in what prison he shall be confined, but in what County proceedings shall be carried on, that is, in the County in which he was arrested. No Judges order is in terms made necessary.

(*b*) The design of this, is to entitle a debtor on the gaol limits of United Counties to have the benefit of such limits after as well as before the separation of one or more of the County or Counties from the remainder; but the necessity for such a provision in the present altered state of the law is not very apparent. Bonds to the limits are no longer conditioned to abide within the limits of any particular County or Counties, but "to observe and obey all notices, orders, or Rules of Court, touching or concerning such debtor, or his answering interrogatories, or his appearing to be examined *viva voce*, or his returning and being remanded into close custody," &c. (Con. Stat. U. C., cap. 24, s. 25.) So long as the debtor is in a position to return to the proper County, and observe and obey all notices, &c., he may reside where he pleases without a breach of the condition of the limit Bond.

(*c*) While the debtor is on the limits, he may go where he pleases, so long as in a position to observe and obey all notices, &c.; but if committed to close custody, he is to be rendered to the Sheriff of the County, whether junior or senior, in which he was arrested.

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property, assets and liabilities of the Provisional Corporation, shall be the head and members of the Council, and the officers, by-laws, contracts, property, assets and liabilities of the new Corporation. (*d*)

BY-LAWS, DEBTS AND RATES OF FORMER UNIONS OF COUNTIES OR TOWNSHIPS AFTER BEING DISSOLVED.

By-laws to continue in Counties and Townships.

59. When a Junior County or Township is separated from a Senior County or Township, the By-laws of the Union shall continue in force in the several Counties or Townships which composed the Union until altered or repealed by the Council or Councils of the same respectively. (*e*)

Upon dissolution of Township unions, the Junior to pay a just portion of debts of the union; and disposition of property of the union.

60. After the dissolution of a Union of Townships, the following shall be the disposition of the property of the Union. (*f*)

1. The real property of the Union situate in the Junior Township, shall become the property of the Junior Township;

2. The real property of the Union situate in the remaining Township or Townships of the Union shall be the property of the remaining Township or Townships; (*g*)

Joint interest in assets.

3. The two Corporations shall be jointly interested in the other assets of the Union, and the same shall be retained by

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(*d*) The Reeves and Deputy Reeves of a junior County may, under sec. 39, and subject to the provisions of that section, be constituted a Provisional Council, with power to appoint provisional officers, make contracts, and under and subject to the provisions of sec. 51, such junior County may, by proclamation, be separated from the Union. Hence it is enacted by the section here annotated, that the head and members of the Provisional Council of the junior County, and the officers, &c., shall be the head, &c., and the officers, &c., of the new Corporation.

(*e*) The effect of this section is to continue existing By-laws of the Union in both the senior and junior Counties and Townships respectively, after a separation, subject to the powers of each independent Council, to repeal or alter the same when the Council of the Union might have done so.

(*f*) This section, so far it will be observed is in its application restricted to Townships exclusively. It is however by subsection 7 made to apply in all cases where an incorporated Village separates from the Township or Townships in which situate.

(*g*) The situation of the real property is made to govern its ownership. If in junior Township the property of Junior Township. If in remaining Township or Townships, then the property of such Townships.

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the one, or shall be divided between both, or shall be otherwise disposed of, as they may agree; (*h*)

Arrangement as to debts.

4. The one shall pay or allow the other, in respect of the said disposition of the real and personal property of the Union, and in respect to the debts of the Union, such sum or sums of money as may be just; (*i*)

How to be determined, in case of disagreement.

5. In case the Councils of the Townships do not within three months after the first meeting of the Council of the Junior Township, agree as to the disposition of the personal property of the Union, or as to the sum to be paid by the one to the other, or as to the times of payment thereof, the matter shall be settled by arbitration under this Act; (*j*)

Amount settled to bear interest.

6. The amount so agreed upon or settled shall bear interest from the day on which the Union was dissolved; and shall be provided for by the Council of the indebted Township like other debts; (*k*)

Case of Village separating from Township.

7. The provisions of the six preceding subsections shall apply in all cases where an incorporated village separates from the Township or Townships in which it is situate. (*l*)

(*h*) The word "assets" is a word well known to the law. It is derived from the French word, "*assez*"—enough. It has a restricted and an enlarged sense. In its restricted sense it means goods *enough* to discharge that burden which is cast upon an executor, &c., in satisfying the debts of a testator, &c. In its enlarged sense, as used in the Municipal Act, it means property as opposed to liabilities. In the section under consideration, provision is in the first subsection made for the disposition of the real property of the Union situate in the Junior Township;" in the second subsection, of the "real property of the Union situate in the remaining township or townships of the Union;" then, in the subsection here annotated, of "the other assets of the Union."

(*i*) *As may be just.* A very vague but under the circumstances as definite an expression as could well be used. The design of the enactment is that the Township Councils should in the first instance come to an understanding or agreement. Failing this, resort must under the next subsection be had to arbitration.

(*j*) So far as the Act directs a distribution of property the Act must be followed. The Corporations cannot of themselves make an arrangement contrary to the Act of Parliament, but in matters where the Act is silent as to the particular division of property or adjustment of assets, it is in the power of the Corporation by amicable arrangement, or through the medium of an arbitration, to adjust the same. (See *The Municipal Council of the County of Wellington* v. *The Municipality of the Township of Wilmot*, 17 U. C. Q. B. 71.)

(*k*) The rate of interest is not mentioned.

(*l*) This subsection is new. It is an extension of the provisions of the section which originally was restricted to the case of a dissolution of a union of Townships.

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61. In case of the separation of a County or Township from a union of Counties or Townships, each County or Township which formed the union shall remain subject to the debts and liabilities of the union as if the same had been contracted or incurred after the dissolution by the respective Counties or Townships which constituted the Union, (*m*) and the effect of the separation of such Union on the officers thereof and their sureties shall be as follows: (*n*)

Liability of union for debts at the time of dissolution.

1. The separation of a Junior County or Township from a Union of Counties or Townships, shall not in any case or in any manner whatever affect the office, duty, power or responsibility of any public officer of the Union who continues a public officer of the Senior County or Township or remaining Counties or Townships after such separation, or the sureties of any such officer or their liability, further than by limiting such office, duty power, responsibility, suretyship and liability to the Senior County or Township, or remaining Counties or Townships. (*o*)

How only officers shall be affected.

2. All such public officers shall after such separation be the officers of the Senior County or Township or remaining Counties or Townships, as if they had originally been respec-

Further as to officers and

(*m*) Here we have declared the separate liability of each County or Township to the creditors of the Union, irrespective of the adjustment made under preceding sections between the Counties or Townships of the Union Though it may be agreed by the adjustment that one County or one Township shall assume and pay all the debts of the Union, creditors are not bound by any such arrangement. No arrangement that may be made without the assent of the creditors can absolve the remaining Counties or Townships of the Union. Each County and Township is liable to contribute towards the satisfaction of the joint debts. (But see sec. 64.) The liability, as will be seen by the next section, exists in some cases though the debentures upon which the liability arises be issued by the senior County, &c., alone, after the dissolution of the Union.

(*n*) The following sub-sections, found necessary in consequence of previously discovered defects in the law, are new and important. (See *Carter* v. *Sullivan*, 4 U. C. C. P. 298, and *Glick* v. *Davidson*, 15 U. C. Q. B. 591.)

(*o*) The necessity for such a provision as this will be manifest upon reading *Thompson et al.* v. *McLean et al.*, 17 U. C. Q. B. 495. In that case it was held (Burns, J., *dissentiente*,) that without such a provision the sureties of a Sheriff were relieved from liability by reason of the change in the office. To fix the liability of sureties beyond all doubt, notwithstanding the separation of Counties, the Legislature has not only declared their continuous liability in the sub-section under consideration, but repeated the declaration specifically in sub-section three of the same section.

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tively appointed public officers for such Senior County or Township, or for such remaining Counties or Townships only. (*p*)

3. All sureties for such public officers shall be and remain liable as if they had become the sureties for such public offices in respect only of such Senior County or Township, or of such remaining Counties or Townships; and all securities which have been given shall, after such separation, be read and construed as if they had been given only for such Senior or remaining County or Counties, or Township or Townships; (*q*) Their sureties.

4. Nothing herein contained shall affect the right of new sureties being required to be given by any Sheriff, or by any Clerk or Bailiff or other public officer, under any statute or otherwise howsoever. (*r*) Right to new sureties not affected.

62. After the dissolution, the Council of the senior or remaining County or Township shall issue its debentures or other obligations for any part of any debt contracted by the Union for which debentures or other obligations might have been, but had not been issued before the dissolution, and such debentures or obligations shall recite or state the liability of the junior County or Township therefor under this Act; and the junior County or Township shall be liable therefor as if the same had been issued by the junior County or Township. (*s*) Debentures to issue for debts, and to bind the old and new Municipalities.

(*p*) This is a consequence of the preceding sub-section. The declaration is not only that the public officers of the union shall, after the separation, be the officers of the senior County or Township, or remaining Counties or Townships, but be so "as if they had originally been respectively appointed public officers for such senior County or Township, or for such remaining Counties or Townships only."

(*q*) This sub-section, in view of what is contained in the two preceding sub-sections, is scarcely necessary, and is only to be found here, owing to the excessive caution of the Legislature.

(*r*) The several sub-sections relate only to existing securities, and so are not to be read as affecting the right to require new sureties, when such new sureties ought to be given under any statute.

(*s*) In the reading of this section there are three points to be noted. *First*, that after the dissolution, the Council of the remaining County or Township shall issue its debentures, or other obligations; but, to be effectual under this section, only "for any part of any debt contracted by the Union." *Second*, that such debentures, &c., shall recite or state the liability of the junior County or Township therefor, under this Act: and *Third*, that the junior County or Township shall be liable thereon as if the same had been issued by the junior County or Township. Some doubt may arise on the third point, as

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Assessments for year preceding dissolution, who to belong to.

63. All assessments imposed by the Council of the Union for the year next before the year in which the dissolution takes effect, shall belong to the Union, and shall be collected and paid over accordingly, and after the dissolution, all special rates for the payment of debts theretofore imposed by any By-law of the Union, shall continue to be levied in the junior County or Township, and the Treasurer of the junior County or Township shall pay over the amount as received to the Treasurer of the senior County or Township, and the latter shall apply the money so received in the same manner as the money raised under the same By-law in the senior County or Township. (*t*)

Special rates for debts continued and to be paid over by Treasurer of the Junior County.

If the sum paid over exceeds the just amount, the excess to be refunded.

64. In case the amount so paid over to the senior County or Township, or to any creditor of the senior County or Township, in respect of a liability of the Union, exceeds the sum which by the agreement or award between the Councils the junior County or Township ought to pay, the excess may be recovered against the senior or remaining County or Township as for money paid or as for money had and received, as the case may be; (*a*)

Provisions to apply to separation of Village from Townships.

1. The provisions of the five preceding sections, numbered sixty, sixty-one, sixty-two, sixty-three and sixty-four (except the sub-sections to section sixty-one) shall apply in all cases where an Incorporated Village separates from the Township in which it is situated. (*b*)

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to the nature of the liability, *i. e.*, whether it is to be a joint and several liability or joint only. The words used, "as if the same had been issued by the junior County or Township," would indicate the former. The object of the section is to provide for the completion of securities to creditors not perfect at the time of separation.

(*t*) The right to rates for the year next preceding the separation is here determined. The special rates mentioned are to be levied in each respective Municipality, after separation, and be collected by each respective collector, as if the By-law imposing the rates had been made after the separation by each County or Township separately. Such is the effect of the By-law of the Union having force in each Municipality severally after the dissolution of the Union. The duties of the Treasurers require careful attention

(*a*) The liability of the junior County or Township respectively, notwithstanding separation, is explained in the note to sec. 61. The right of the senior County or Township to rates imposed before the separation, is also explained in the note to sec. 63. The section under consideration provides for the reimbursement to the junior Municipality any sum which the junior may have paid, exceeding the proportion which it, according to the adjustment with the senior, was bound to contribute.

(*b*) The insertion of this section here appears to be an afterthought

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MUNICIPAL COUNCILS, &c., OF WHOM COMPOSED.

The Heads.

Heads of Corporations, &c.

65. The head of every County and Provisional Corporation shall be designated the Warden thereof, and of every City and Town, the Mayor thereof, and of every Township and Incorporated Village, the Reeve thereof.

The Members.

County Councils.

66. The Councils of Counties, Cities, Towns, Incorporated Villages and Townships shall be constituted as follows: (*d*)

1.—In Counties.

Counties.

The Council of every County shall consist of the Reeves and Deputy Reeves of the Townships and Villages within the County, and of any Towns within the County which have not withdrawn from the jurisdiction of the Council of the County, and one of the Reeves or Deputy Reeves shall be the Warden. (*e*)

2.—In Cities.

Cities.

The Council of every City shall consist of three Aldermen for every Ward, one of whom shall be Mayor, to be elected in accordance with the provisions of the one hundred and fifth section of this Act. (*f*)

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on the part of the Legislature. It resembles sub-sec. 7 of sec. 60, and while clearly unnecessary so far as that section is concerned, is intended to have the same relation to secs. 61, 62, 63, and 64, which that sub-section bears to sec. 60.

(*c*) *Designated.* That is described in all acts, deeds, writs, and matters of every kind in which it becomes necessary to refer to the head of the corporation by name. The proper designation of a warden in a *quo warranto* summons is "Warden of the Corporation of the County of," &c. But "Warden of the County of," &c., is not improper (*The Queen ex rel. McManus* v. *Ferguson*, 2 U. C. L. J., N. S. 19).

(*d*) It is not the duty of the members of a Municipal Council to determine the validity of the election of one of their members. Where the Returning Officer has returned him elected, he may sit and vote until unseated by process of law. (*In re Hawk and Ballard*, 3 U. C. C. P. 241.)

(*e*) This sub-section is as much applicable to provisional as other County Councils. It in terms applies to the Council of "*every* County."

(*f*) Formerly the Council of a City was composed of two aldermen and two councilmen; the latter needing less property qualification than the former, but having equal power of voting from each ward. The office of councilman in Cities no longer exists. Its existence was unnecessary, and its abolition under the circumstances proper and right. But while the office of councilman is abolished, an additional

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3.—In Towns.

Towns.

The Council of every Town shall consist of the Mayor, who shall be the head thereof, and of two Councillors for every Ward, (*g*) and if the Town has not withdrawn from the jurisdiction of the Council of the County in which it lies, then a Reeve shall be added, (*h*) and if the Town had the names of five hundred freeholders and householders on the last revised Assessment Roll, then a Deputy Reeve shall be added, and for every additional five hundred names of persons possessing the same property qualification as voters on such Roll, there shall be elected an additional Deputy Reeve. (*i*)

4.—In Incorporated Villages.

Incorporated Villages.

As amended by cap. 52.

The Council of every Incorporated Village shall consist of one Reeve, who shall be the head thereof, and four Councillors, and if the Village had the names of five hundred freeholders and householders on the last revised Assessment Roll, then of a Reeve, Deputy Reeve, and three Councillors, and for every additional five hundred names of persons possessing

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alderman is given to each ward. Another change is the provision for the election of Mayors from among the aldermen, and by the aldermen; this, until lately, was the system that prevailed. The return to the old system has become expedient, in consequence of the deterioration of aldermen and Mayors, since Mayors became elective by the people at large, and from among the people at large. Not only did the elective system in most cases fail to secure as good a man for the office of Mayor as formerly, but leaving the election of Mayor to the general body of electors, destroyed the ambition of those who went into the Council with the hope or the chance of becoming Mayor, which had a dwarfing effect upon the whole body of aldermen. Now that any alderman is eligible to be elected Mayor and must be elected from among the aldermen, and by the aldermen it is believed the general standing of City Councils will be improved.

(*g*) Incorporated towns are divided into wards; and no town is to have less than three wards; and no ward less than five hundred inhabitants (sec. 17).

(*h*) The Council of a town may pass a By-law to withdraw the town from the jurisdiction of the County Council (sec. 26); and if the town be withdrawn, the Mayor and councillors would form an independent Council. If independent they would have no rights to seats in the County Council, and the election of Reeves and a Deputy Reeve would therefore cease.

(*i*) The population of an incorporated town must always exceed five hundred *inhabitants*, as there must be three wards, and each ward contain that number of inhabitants (sec. 17); but there may be in an incorporated town more than five hundred inhabitants (including women and children), and yet not, as mentioned in this sub-section, five hundred *freeholders* and *householders*, on the last revised assessment roll.

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the same property qualification as voters on such Roll, there shall be elected an additional Deputy Reeve instead of a Councillor. (*j*)

5.—In Townships.

Townships.

The Council of every Township shall consist of a Reeve, who shall be the head thereof, and four Councillors, and if the Township had the names of five hundred freeholders and householders on the last revised Assessment Roll, then the Council shall consist of a Reeve, Deputy Reeve, and three Councillors, and for every additional five hundred names of persons possessing the same property qualification as voters on such Roll, there shall be elected an additional Deputy Reeve instead of a Councillor (*k*)

As amended by cap. 52.

County Councils.

Certificates to be filed by Reeves and Deputy Reeves.

As amended by cap. 52.

67. No Reeve or Deputy Reeve shall take his seat in the County Council until he has filed with the clerk of the county council a certificate under the hand and seal of the Township, Village or Town Clerk, that such Reeve or Deputy Reeve was duly elected, and has made and subscribed the declarations of office and qualification (unless exempted therefrom) as such Reeve or Deputy Reeve; (*l*) nor in case of a Deputy

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(*j*) A Village, to be incorporated, must contain seven hundred and fifty inhabitants (not necessarily freeholders and householders).

(*k*) Formerly Township Councils, when the Townships were divided into wards, consisted of a Councillor from each ward. The division of wards in Townships for election purposes no longer exists. Each Township may have at least five members, of whom one shall be Reeve, and where there are five hundred freeholders and householders on the roll, another Deputy Reeve. So that every Township of five hundred freeholders and householders now may have a Deputy Reeve and some Townships more than one Deputy Reeve; for it is provided that for every additional five hundred names of persons possessing the same property qualification as voters on the roll there shall be elected an additional Deputy Reeve instead of a Councillor. But as no Township Council can have more than five members, any Township of the requisite number of voters may have all its members Reeve and Deputy Reeves. Thus in a Township of 2,000 voters there may be four Deputy Reeves and one Reeve.

(*l*) The clerk may reject the certificate if not in the form required. The section is positive that no Reeve, &c., shall take his seat, &c., *until* he has filed, &c. The certificate made necessary is the evidence of the right of the person presenting it to a seat in the County Council. The County Clerk is in the first instance made the judge of its legal sufficiency. But no clerk should according to his own caprice or preference of any kind decide in favour of and allow certain persons with defective certificates to take their seats, and disallow other certificates quite as good. In such a case the clerk if made a party

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Reeve, until he has also filed with the Clerk of the County an affirmation or declaration of the Clerk, or other person

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to a contested election proceedings would be in all probability made to pay costs. But it does not follow that a Reeve or Deputy Reeve, whose certificate is defective, if once admitted by the clerk to sit and vote, has not the right to do so when in truth qualified. Nor does it follow that a certificate in all respects regular entitles the Reeve or Deputy to sit and vote in the Council if not really qualified. The certificate is only evidence that what is contained in it was done. If it has not been done, or the Reeve or Deputy Reeve had not been duly elected, the mere certificate would not give the party holding it the right to sit and vote in the Council. That right comes from his being the Reeve or Deputy Reeve and having made the required declarations. If the certificate were the essence of his qualification and not merely the evidence of it, then it might be held that the acts done by the Reeve or Deputy Reeve who did not possess it, or only possessed a defective one, were void. But the certificate merely being evidence of his qualification, if it turn out that he is really qualified, it cannot be held that his acts as a member of the County Council are void. Nor can they be in any way impugned on account of the imperfect certificate. The Statute does not declare that the votes of any Reeve or Deputy Reeve taking his seat without the certificate shall be void, nor say that the proceedings supported and carried by such votes shall not be binding. The section in this respect may be properly considered directory and so construed. (See *The Queen ex rel. McManus* v. *Ferguson*, 2 U. C. L. J., N. S., 19.)

The Statute gives no form of certificate. In consequence, defective certificates are frequently given by Township, Town and Village Clerks, who, in the absence of an approved form, are driven to rely upon their own judgment. In such a case the words of the Act of Parliament cannot be too closely followed. (See forms held bad in *The Queen ex rel. McManus* v. *Ferguson*, 2 U. C. L. J., N. S., 19.) The following is submitted as a form sufficient for the purposes of the section wherever applicable:

I, A. B., of ———, gentleman, Clerk of the Corporation of the Township (Town *or* Village, *as the case may be*) of ——— in the County of ——— do hereby, under my hand and seal, certify that C. D. of ———, Esquire, was duly elected Reeve (*or* Deputy Reeve, *as the case may be*) of the said Township (Town *or* Village, *as the case may be*) and has made and subscribed the declarations of office and qualification as such Reeve (*or* Deputy Reeve, *as the case may be*).

Given under my hand and seal at ———, in the said Township (Town *or* Village, *as the case may be*) this —— day of ——, A.D. 18—.

A. B. [L. S.]
Township Clerk.

The certificate must be "under the hand and seal of the Township, Village, or Town Clerk." It is not said that the *Clerk* shall certify under the seal of the Township, &c. It would have been better had the Legislature so provided; for the seal of the Corporation if appended to an official paper of the kind would in general be taken as more satisfactory evidence of the genuineness of the writing than the mere private seal of an individual.

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having the legal custody of the last revised assessment rolls for the municipality which he represents, that there appears upon such rolls the names of at least five hundred freeholders and householders in the municipality for the first Deputy Reeve elected for such Municipality, and that no alteration reducing the limits of the municipality and the number of persons possessing the same property qualifications as voters within five hundred for each additional Deputy Reeve since the said rolls were last revised, has taken place. (*m*)

Trustees of Police Villages.

68. The Trustees of every Police Village shall be three in number, one of whom shall be the Inspecting Trustee. (*n*)

PROVISIONAL COUNCILS.

Who to Compose.

What Reeves and Deputy Reeves to be Provisional Council.

69. The Reeves and Deputy Reeves of the Municipalities within a Junior County for which a Provisional Council is established shall *ex officio* be the members of the Provisional Council. (*o*)

(*m*) The affirmation or declaration of the Clerk, &c., may be in the following form:

County of ———, } I, A. B., of ———, gentleman, Clerk of the
TO WIT: } Township, (Town or Village, *as the case may be,*)
do hereby declare and affirm as follows:—

1. That I am the person having the legal custody of the last revised assessment roll for the Corporation of the said Township, (Town, or Village, *as the case may be.*)

2. That there appears upon such roll the names of at least ——— hundred (*five hundred for each Deputy Reeve,*) freeholders and householders in the said Township, (Town or Village, *as the case may be.*)

3. That no alteration reducing the limits of the said Municipality and the number of persons possessing the same property qualifications as voters within ——— hundred, (*five hundred for each Deputy Reeve*) since the said roll was last revised, has taken place.

A. B.

It is apprehended that the Council, having received the affirmation or declaration of the Clerk, &c., that there appears upon the rolls the requisite number of freeholders and householders, &c., have no right themselves to question the fact by rejecting the Deputy Reeve, but should leave the truth of the fact, if doubted, to be determined by the Courts.

(*n*) As to the duties of Trustees of Police Villages, see sec. 308 *et seq.*

(*o*) The Reeves and Deputy Reeves of the Municipalities, *i. e.*, of every Municipality within the junior County, shall *ex officio* be the members of the Provisional Council. As to powers and liabilities of a Provisional Council, see sec. 44, *et seq.*

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QUALIFICATION OF MAYORS, ALDERMEN, REEVES, DEPUTY REEVES, COUNCILLORS, AND POLICE TRUSTEES.

Qualification of Councillors, &c.

70. The persons qualified to be elected Mayors, Aldermen, Reeves, Deputy Reeves and Councillors or Police Trustees, are such residents of the municipality within which, or within two miles of which, the municipality or police village is situate, (*p*) as are not disqualified under this Act, (*q*) and have, at the time of the election, in their own right or in the right of their wives, as proprietors or tenants, a legal or equitable freehold or leasehold, rated in their own names on the last revised assessment roll of such municipality or police village (*r*) to at least the value following:

(*p*) Before this enactment it was held that a person rated on the assessment roll of a city but at the time of the election resident in an adjoining Township of the County in which the city was territorially situate, though almost in the boundary between the two Municipalities, was not qualified to be elected a member of the Council of the city. (*The Queen ex rel. Blasdell* v. *Rochester*, 7 U. C. L. J. 101; *The Queen ex rel. Fleming* v. *Smith*, *Ib.* 66.) But this section extends the privileges beyond residents of the particular Municipality to residents within two miles of which the Municipality is situate.

(*q*) See sec. 73.

(*r*) It is in general necessary that the person elected should be rated by name on the roll. (*The Queen ex rel. Metcalf* v. *Smart*, 2 U. C. Cham. R. 114, but see *The Queen ex rel. Laughton* v. *Baby*, *Ib.* 130.)

Where on the assessment roll under the general heading, "Names of taxable parties," were entered the names of "Ker, William and Henry" for two separate parcels of land, and in the proper columns were the letters "F." and "H." and in the column headed "owners and address" was entered opposite to the parcels of land, "Wm. Ker & Bros." *Held*, that "William Ker and Henry Ker," and not "William Ker & Brothers," were the persons in whose names the properties were rated, and that they were sufficiently rated. (*The Queen ex rel. McGregor* v. *Ker*, 7 U. C. L. J. 67.) Judges are in general disposed to go as far as the facts will allow for the purpose of reconciling the mode of rating with the facts, if the person elected has really a legal qualification. (*The Queen ex rel. Northwood* v. *Askin*, 7 U. C. L. J. 130; *The Queen ex rel. Ford* v. *Cottingham*, 1 U. C. L. J., N. S., 214; *The Queen ex rel. Chambers* v. *Allison*, *Ib.* 244.) Where a person elected as alderman of a city made a declaration of office inadvertently qualifying upon property in respect of which he was not entitled to qualify, but was qualified in respect of other property, his election was sustained. (*The Queen ex rel. Hatrey* v. *Dickey*, 1 U. C. L. J., N. S., 190.) It is not necessary that the party assessed should be possessed of the property to his own use. A landlord is so sufficiently possessed where his tenants occupy the premises. (*The Queen ex rel. Shaw* v. *McKenzie*, 2 U. C. Cham. Rep. 36.) A landlord may put together properties some occupied by himself and some by his tenants, to make up the assessed

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In Townships—Freehold to four hundred dollars, or leasehold to eight hundred dollars; (*s*) — In Townships;

In Police Villages—Freehold or leasehold to four hundred dollars; — In Police Villages;

In Incorporated Villages—Freehold to six hundred dollars or leasehold to twelve hundred dollars; — In Incorporated Villages;

In Towns—Freehold to eight hundred dollars, or leasehold to sixteen hundred dollars; — In Towns.

And in Cities—For Mayor and Aldermen—Freehold to four thousand dollars, or leasehold to eight thousand dollars; — In Cities.

And so in the same proportion in all Municipalities and Police Villages in case the property is partly freehold and partly leasehold. (*t*) — As to property party freehold.

The term "Leasehold" in this section, shall not include a term less than a tenancy for a year, or from year to year. (*u*) — "Leasehold" defined.

And the qualification of all persons where a qualification is required under this Act may be of an estate either legal or equitable. (*v*) — Nature of Estate.

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value required by statute. But persons not in fact rated on the roll are not eligible though they may suppose they are, and though possessed of property sufficient to qualify. (*The Queen ex rel. Metcalfe* v. *Smart*, 10 U. C. Q. B. 89.) So property owned by a candidate but not mentioned on the assessment roll, cannot be made available. (*The Queen ex rel. Carroll* v. *Beckwith*, 1 U. C. Prac. R. 278.) An administrator, though rated in his own name for real estate belonging to the deceased, is not entitled to qualify upon such real estate. (*The Queen ex rel. Stock* v. *Davis*, 3 U. C. L. J. 128.) But the roll as to property qualification is in general binding and conclusive. (*The Queen ex rel. Land* v. *Cottingham*, 1 U. C. L. J. N. S, 214; *The Queen ex rel. Chambers* v. *Allison*, *Ib.* 244.)

(*s*) Formerly aggregate value prevailed in Townships, but annual value in Cities, Towns and Incorporated Villages. The distinction for purposes of municipal elections no longer exists.

(*t*) See *The Queen ex rel. Dexter* v. *Govan*, 1 U. C. Prac. R. 104.

(*u*) The estate which the law denominates a term is so denominated because its duration is *absolutely defined*. Hence there must be to every term a certain beginning or definite commencement, and a certain or definite period beyond which it cannot last. (Watkins' Conveyancing, 29, 32.)

(*v*) The qualification may be of an estate legal or equitable. The estate whether legal or equitable need not be free from all incumbrances. If incumbered, and after deducting the gross amount of the incumbrances from the assessed value of the premises, there be still left a sufficient value in respect of which to qualify, the qualification, notwithstanding the incumbrances, is sufficient. (*The Queen ex rel. Blakeley* v. *Canavan*, 1 U. C. L. J., N. S., 188.) Where defendant in November,

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In new Townships not having assessment roll.

71. In case of a new Township erected by proclamation for which there has been no assessment roll, every person who at the time of the first election has such an interest in real property and to such an amount as hereinbefore mentioned, shall be deemed to be possessed of a sufficient property qualification. (*a*)

If only one person be qualified.

72. In case in a Municipality there are not at least two persons qualified to be elected for each seat in the Council, no qualification beyond the qualification of an elector shall be necessary in the persons to be elected. (*b*)

DISQUALIFICATION.

Disqualification of Councillors, &c.

As amended by cap. 52.

73. No Judge of any Court of Civil Jurisdiction, no Gaoler or Keeper of a House of Correction, no Sheriff, Deputy-Sheriff, High Bailiff or Chief Constable of any City or Town, (*c*) Assessor, Collector, Treasurer, Chamberlain, or Clerk of any Municipality, (*d*) no bailiff of a Division Court,

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1858, conveyed the real estate which formed the subject matter of his qualification to his father for a consideration of £300, for which he took his father's notes payable at distant dates, and in February, 1860, purchased the property back, returning to his father all the notes, though the father did not reconvey the property to the son till the 3rd October, 1860. Yet the son was held to have had at the time of the assessment an equitable estate within the meaning of the Act. (*The Queen ex rel. Tilt* v. *Cheyne*, 7 U. C. L. J. 99.)

(*a*) It may so appear that a new Township has not been assessed either separately or as part of a union (sec. 28 *et seq.*) and this section is intended to meet such a case whenever it arises.

(*b*) In what manner is this section to be construed? Is it only to come into operation when the number is below two persons qualified to be elected for each seat as applied simply to qualification in respect to property, or after deducting all those who are disqualified to be elected from other causes? It is apprehended the expression, "qualified to be elected," must be construed in the larger sense, that is, for the benefit and advantage of the whole body of electors; for if it should happen from some cause or other that all those who might be elected as respects property, yet were disqualified as respects interest or otherwise, the Municipality could have no Council if the inhabitants could not resort to the general body of electors for Councillors (*per* Burns, J.), in *The Queen ex rel. Bender* v. *Preston*, 7 U. C. L. J. 100). It has been held for the purposes of this section that the roll is not conclusive as to the "persons qualified to be elected." (*The Queen ex rel. Telfer* v. *Allan*, 1 U. C. Prac. R. 214.)

(*c*) The old law did not in words extend to Sheriffs, Deputy-Sheriffs, High Bailiffs, or Chief Constables, and to these the list of disqualifications has now been extended.

(*d*) The old law did not in words specify the particular municipal officers disqualified. The words were, "no officer of any Municipality."

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no Sheriff's Officer, (*e*) no person not having paid all taxes due by him, (*f*) no Innkeeper or Saloon-keeper, (*g*) and no person having by himself or his partner an interest in any contract with or on behalf of the Corporation, (*h*) shall be

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To avoid doubt the officers are here described, viz., Assessor, Collector, Treasurer, Chamberlain, and Clerk. A local superintendent of Schools held not disqualified (*The Queen ex rel. Arnott* v. *Marchant*, 2 U. C. Cham. R.); nor a Mayor (*The Queen ex rel. Sawers* v. *Stevenson*, 5 U. C. L.J. 42). But an overseer of highways was held disqualified under the old law (*The Queen ex rel. Richmond* v. *Tegart*, 7 U.C. L.J. 128). So probably the Corporation Solicitor (*Corporation of Peterborough* v. *Burnham*, 12 U. C. C. P. 103). *Quære*, as to the effect of this statute disqualifying certain officers by designation of office and not as under the old law all officers of the corporation? If at the time of the election there be a dispute in good faith between the candidate and the Municipality, arising out of matters connected with the administration of the duties of a Municipal office previously held by the candidate, having given a bond for the due performance of the duties of his office, he will be disqualified. (*The Queen ex rel. Bland* v. *Figg*, 6 U. C. L. J. 44; see also *The Queen ex rel. McMullen* v. *Delisle*, 8 U. C. L J. 291.) But where all transactions are *bonâ fide* closed the disqualification no longer exists. (*The Queen ex rel. Armor* v. *Coste*, 8 U. C. L. J. 290.)

(*e*) Extends as much to a bookkeeper or clerk in a sheriff's office as to sheriffs' bailiffs.

(*f*) This is a new and important provision. Its object is to enforce payment of taxes in the year in which they accrue, and under any circumstances before the election for the succeeding year.

(*g*) A man may be an innkeeper or saloon-keeper, though he take out a license in the name of another, where he does so fraudulently. *The Queen ex rel. McKay* v. *Brown*, 5 U. C. L. J. 91.) Where, however, the transfer of license is in good faith, there is no disqualification. (*The Queen ex rel. Crozier* v. *Taylor*, 6 U. C. L. J. 60.) But a man may be inn-keeper or saloon-keeper though without a license. (*The Queen ex rel. Flanagan* v. *McMahon*, 7 U. C. L. J. 155.)

(*h*) The object of this part of the section, like that of sec. 28 of the English Mun. Cor. Act of 5 & 6 Wm. IV. cap. 76, is clearly to prevent all dealings on the part of the Council with any of its members in their private capacity, or, in other words, to prevent a member of the Council, who stands in the situation of a trustee for the public, from taking any share or benefit out of the trust fund, or in any contract in the making of which he, as one of the Council, ought to exercise a superintendence. (Rawlinson's Mun. Man. 53.) The evil contemplated being evident, and the words used general, they will be construed to extend to all cases which come within the mischief intended to be guarded against, and which can fairly be brought within the words. (*Ib.*) The words of our enactment are that "no person having by himself or his partner an interest in any contract with or on behalf of the corporation shall be qualified, &c.:" and the words of the English Act are that "no person shall be qualified, &c., who shall have, directly or indirectly, by himself or his partner, any share or interest in any contract *or employment* with, by, or on behalf of such

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Proviso: As to shareholders in Companies, &c.

qualified to be a member of the Council of any Municipal Corporation. (*i*) Provided, always, that no person shall be held to be disqualified from being elected a member of the Council of any Municipal Corporation by reason of his being a shareholder in any incorporated company having dealings or contracts with the Council of such Municipal Corporation (*j*) or by having a lease of twenty-one years or upwards of any

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Council, &c." The difference deserves to be noticed. Under an old act, of which the section here annotated is a re-enactment, it was held that a person who had executed a mortgage to the corporation containing covenants for payment of money, was disqualified. (*The Queen ex rel. Lutz* v. *Williamson*, 1 U. C. Prac. Rep. 91.) Where defendant, before the election, had tendered for some painting and glazing required for the city hospital, and his tender having been accepted, he had done a portion of the work, for which he had not been paid, but afterwards refused to execute a written contract prepared by the City Solicitor, and informed the Mayor of the City that he did not intend to go on with the work, he was notwithstanding held to be disqualified. (*The Queen ex rel. Moore* v. *Miller*, 11 U. C. Q. B. 465.) So where the person elected had tendered for the supply of wood and coal to the corporation. (*The Queen ex rel. Rollo* v. *Beard*, 1 U. C. L. J., N. S. 126.) In such a case it is immaterial whether there is or is not a contract binding on the corporation. (*Ib.*) So where it was shown that the candidate elected was at the time of the election surety for the Treasurer of the Town and acting as the Solicitor of the Corporation, he was held to be disqualified. (*The Queen ex rel. Coleman* v. *O'Hare*, 2 U. C. Prac. Rep. 18.) So a surety in any sense to the Corporation. (*The Queen ex rel. McLean* v. *Watson*, 1 U. C. L. J., N. S., 71.) Whether the contract be in the name of the party himself or another, is immaterial, at all events in equity. (*Collins* v. *Swindle*, 6 Grant, 282; see also *City of Toronto* v. *Bowes*, 4 Grant, 489, S. C 6 Grant, 1.) But an agent of an insurance company paid by salary or commission, who, both before and since the election, had, on behalf of his company, effected insurances on several public buildings the property of the corporation, and who at the time of the election had rented two tenements of his own to the Board of School Trustees for Common School purposes, was held not to be disqualified. (*The Queen ex rel. Bugg* v. *Smith*, 1 U. C. L. J., N. S., 129.)

Quære, is insolvency a ground of disqualification for election? It is not made so in express terms, but is hereafter declared a forfeiture of office. (See sec. 121; see also *The Queen* v. *Chitty*, 5 A. & E. 609.)

(*i*) The disqualification does not merely relate to the time of acceptance of office but to the time of the election. (*The Queen ex rel. Rollo* v. *Beard*, 1 U. C. L. J., N. S., 126.) To refer the qualification to the time when the person elected might actually take his seat at the council board would be wholly at variance with the spirit of the act, and fatal to this very wholesome provision of the act as to disqualification. (*Per* Hagarty, J., *Ibid.*)

(*j*) The law was formerly different. (*The Queen ex rel. Padwell* v. *Stewart*, 2 U. C. Prac. Rep. 18.)

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property from the Corporation, (*k*) but any such leaseholder shall not vote in the Corporation on any question affecting any lease from the Corporation. (*l*)

EXEMPTIONS.

Exemptions.

74. All persons over sixty years of age; all members and officers of the Legislative Council and of the Legislative Assembly; all persons in the Civil Service of the Crown; all Judges not disqualified by the last preceding section; all Coroners; all persons in Priests' Orders; Clergymen and Ministers of the Gospel of every denomination; all members of the Law Society of Upper Canada, whether Barristers or Students; all Attorneys and Solicitors in actual practice; all officers of Courts of Justice; all members of the Medical profession, whether Physicians or Surgeons; all Professors, Masters, Teachers and other members of any University, College or School in Upper Canada, and all officers and servants thereof; all Millers; and all Firemen belonging to an authorized Fire Company (*m*)—are exempt from being elected or appointed Councillors or to any other corporate office. (*n*)

(*k*) The law in this respect was also at one time different. (*The Queen ex rel. Stock* v. *Davis*, 3 U. C. L. J. 128; *The Queen* v. *York*, 2 Q. B. 847; *Sampson* v. *Ready*, 12 M. & N. 736; *The Queen* v. *Francis*, 21 L. J. Q. B. 304.)

(*l*) So that the disqualification in the case of a corporation lessee is not entirely removed—in other words, while qualified to be elected he is disqualified to vote in the corporation "on *any* question affecting *any* lease from the corporation.'

(*m*) These are without addition the exemptions under the old act.

(*n*) The last section contains the disqualifications, and this the exemptions. The difference between a disqualification and an exemption, as regards an individual, is this, that a person disqualified cannot hold office, but a person exempt, even though qualified, is not bound to accept office. The one is an incapacity or disability. The other is a privilege. It is an offence at common law for a person without some legal ground of objection to refuse to take upon himself an office to which he has been duly elected. (*The King* v. *Bower*, 1 B. & C. 585.) And held, that payment of a fine imposed by a by-law for not serving in the office was no answer to a writ of *mandamus*. (*Ib.*) A person so refusing may be indicted (see *Vanacher's case*, 1 Ld. Rayd. 499; Carthew, 400), and be subject to a criminal information. (See *The King* v. *Whitwell*, 5 T. R. 85; *The King* v. *Heyland*, 3 M. & S. 186.) But the granting of such an information is clearly discretionary with the Court. (*The King* v. *Grosvenor*, 2 S. 1193. *The King* v. *Hungerford*, 11 Mer. 142.) So a qualified person duly elected refusing to accept office may be summarily convicted and punished. (See sec. 186.)

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ELECTORS.

Electors, qualification of, in Townships, &c., having an Assessment-Roll.

75. The Electors of every Municipality for which there is an Assessment-Roll, and the Electors of every Police Village, (*o*) shall be the male freeholders thereof, whether resident or not, (*p*) and such of the ~~male~~ householders thereof (*q*) as have been resident therein for one month next before the Election, (*r*) who are natural born or naturalized subjects of

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(*o*) The distinction is here drawn between a Municipality and a Police Village. The word "Municipality" signifies any locality the inhabitants of which are incorporated. The inhabitants of a Police Village are not incorporated.

(*p*) Females being clearly excluded. This section enables freeholders to vote though not resident. But non-residents cannot vote unless rated on the assessment roll, which they may be at their own request. As to new townships, residence is still required in the case of free holders. (See 77.)

(*q*) The occupant of any separate portion of a house having a distinct communication with a road or street by an outer door, is clearly a householder (see s. 166); and it seems to be now settled in England, where a house is let out in separate portions to different tenants, and the owner or landlord does not reside on the premises, though there is but one outer door common to all the tenants, that each distinct portion so let is the house of such occupier. (See *The King* v. *Trafibar*, 1 Leach, 427; *The King* v. *Carroll*, ib. 680; *The King* v. *Bailey*, 1 Moore, C. C. 23; and Littledale, J., *in The King* v. *Mayor of Eye*, 9 A. & E. 670; see also *The Queen ex rel. Forward* v. *Bartels*, 7 U. C. C. P. 533.) A person is not the less a householder because he lets a portion of his house to lodgers. (*Phillip's case*, Alcock's Registration cases 20; *Dungenan's case*, ib. 114, *The King* v. *Weighton*. 5 Q. B. 896.) A person occupying apartments in a gaol held not to be a householder. (*The Queen ex rel. Charles* v. *Lewis et al.*, 2 U. C. Cham. Rep. 171.) But a person living with his father, having no interest of any kind in the house or land, is not entitled to be assessed either as a householder or freeholder. (*The Queen ex rel. McLean* v. *Graham*, 8 U. C. L. J. 125.)

(*r*) Nice questions arise as to when a party can, or cannot be said to be a *resident* of a Municipality. A man cannot, within the meaning of the municipal laws, be said to be resident in *two* Municipalities at the same time. A man's residence is where his home is situate—where his family live. An occasional absence from his home to attend to business in another Municipality does not make his home less his residence. Where A had a dwelling-house at Bowmanville, where his wife and family lived, but had a saw mill and store and was Postmaster in the township of Cartwright, which occasioned him frequently to visit that place, and who, while there, used to board with one of his men in a house owned by himself. *Held*, that after voting, in Bowmanville he had no right to vote in Cartwright. (*The Queen ex rel. Taylor* v. *Cæsar*, 11 U. C. Q. B. 461.) Mere colourable residence is in no case sufficient. (*The King* v. *Duke of Bedford*, 6 T. R. 560.) Each case must, to a great extent, depend on its own circumstances. As to what is sufficient, (see *The King* v. *Sergeant*, 5 T. R. 466; *Bruce* v. *Bruce*,

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Her Majesty, (*s*) and of the full age of twenty-one years, (*t*) and who were severally but not jointly rated on the last Revised Assessment-Rolls, for real property in the Municipality or Police Village, held in their own right or that of their wives as proprietors or tenants, (*u*) and who had paid all Municipal taxes due by them on or before the sixteenth day of December next preceding the election; (*uu*) and such rating

As amended by cap. 32.

Must have paid all taxes.

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2 B. & P. 229; *The King* v. *Mitchell*, 10 East 511; *Whithorn* v. *Thomas*, 7 M. & G. 1; *The Queen ex rel. Forward* v. *Bartels*, 7 U. C. C. P. 538.)

(*s*) It is to be presumed that resident and assessed inhabitants of this Province are British subjects till something is shown to the contrary, from which it can be determined that they are aliens. (*The Queen ex rel. Carrall* v. *Beckwith*, 1 U. C. Prac. R. 284.) It is not sufficient for relator to swear that certain voters are aliens, without giving particular facts to show that they are aliens, and how aliens, as by having been born in a certain place named. out of the allegiance of the British Crown. (*Ib.*) A person born in New York in 1830, the son of a British subject, who had emigrated from Ireland a short time previously, and a year or two after his birth came to Upper Canada, and ever since resided here, *held* to be a British subject within the meaning of the act. (*The Queen ex rel. McLean* v. *Graham*, 8 U. C. L. J. 125.)

(*t*) Full age in male or female is twenty-one years, and is completed on the day preceding the anniversary of a person's birth. (*Anon*, 1 Salk. 44; *Yoder* v. *Sansam*, 1 Brown P. C. 468.) If therefore one is born on 1st January, he is of age to do any legal act on the morning of the last day of December, though he may not have lived twenty-one years by nearly 48 hours. (Tomlin "Infant," 1.) Upon a question of age of a voter, the written memorandum of the clergyman who married his parents was held better evidence than the memory of individuals, unaccompanied by such memorandum. (*The Queen ex rel. Forward* v. *Bartels*, 7 U. C. C. P. 538.)

(*u*) The franchise is not to be lost to any one who is really entitled to vote, if his right can be sustained in a reasonable view of the requirements of the act. (*The Queen ex rel. Chambers* v. *Allison*, 1 U. C. L. J., N. S. 244.) The inclination of the Courts is in every way to favor the franchise. (*The Queen ex rel Ford.* v. *Cottingham*, 1 U. C. L. J., N. S., 214.) The rating has been held sufficient where the surnames were correct, though the Christian names were erroneous. (*The Queen ex rel. Chambers* v. *Allison*, 1 U. C. L. J., N. S., 244.) Thus Wilson Wilson, for "William Wilson." So "Simond Faulkner," for "Alexander Faulkner." (*Ib.*) And "Thomas Sanderson," held *idem sonans* with Thomas Anderson, so as to entitle the person bearing the latter name to vote. (*Ib.*) It is not only necessary that the freeholder or house holder should be rated as such, but, at the time of the election, hold the property in respect of which he is rated (*Anon.*, 8 U. C. L. J. 76), and the property must be held in the right of the elector or that of his wife, and not simply in a representative capacity as executor, administrator or agent. (*The Queen ex rel. Stock* v. *Davis*, 8 U. C. L. J. 128.) A Municipal Council has not of course any power to declare a qualification of voters different from this Act. (*In re Bell and the Township of Manvers*, 8 U. C. C. P. 399.)

(*uu*) See note *f* to sec. 78.

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shall be absolute and final, and shall not be questioned either by any Returning Officer, or on any application to set aside any election under this Act, or any Act respecting the Municipal Institutions of Upper Canada. (*v*)

In Cities, Towns and Incorporated Villages.

76. In Cities, Towns, Townships and Incorporated Villages, such real property, whether freehold or leasehold, or partly each, must have been so rated as of at least the actual value following: (*a*)

In Cities—Six hundred dollars.
In Towns—Four hundred dollars.
In Incorporated Villages—Three hundred dollars.
In Townships—One hundred dollars.
In Police Villages—One hundred dollars. (*b*)

In newly erected Townships not having any Assessment Rolls.

77. At the first election for a newly erected Municipality for which there is no separate Assessment-Roll, (*c*) every resident male inhabitant, though not previously assessed, (*d*)

(*v*) This had previously been held to be the law by several judges under the old act in almost the same language as that here used. (*The Queen ex rel. Ford* v. *Cottingham*, 1 U. C. L. J., N. S., 214; *The Queen ex rel. Johnson* v. *Price*, and *The Queen ex rel. Milligan* v. *Johnson*, 1 U. C. L. J., N. S., 217, note; *The Queen ex rel. Chambers* v. *Allison*, 1 U C. L. J., N. S., 244.)

(*a*) Formerly for Municipal purposes real property was rated at annual value in Cities, Towns and Incorporated Villages, and at actual value in Townships. The distinction is now abolished. Actual value is made to prevail in all local Municipalities.

(*b*) There is no general law which makes dollars and cents a more correct or lawful designation of Canadian money than pounds, shillings and pence. The only law of the kind really in force is Con. Stat. Can. cap. 14, sec. 21, which requires all accounts rendered to the Provincial Government, &c., to be in dollars and cents. The adoption of dollars and cents by bankers and others is conventional. The description by dollars and cents is however invariably used throughout this act, in preference to that by pounds, shillings and pence.

(*c*) A newly erected Municipality means more than a newly erected Township, and may include a junior Township newly separated, or a Village newly separated from a Township and incorporated. In such a case there would be the roll of the United Township or Township from which the Village is separated. But neither of these could properly be used at the first election of the new Municipality not being "a separate assessment" roll within the meaning of the section. Where in the case last mentioned the roll of the Township was used at the election without objection, and though objected to in the argument of a *quo warranto* summons, was not set forth in the statement as a ground of objection to the election, the presiding judge refused to entertain it. (*The Queen ex rel. Carrall* v. *Beckwith*, 1 U. C. Prac. Rep. 278.)

(*d*) See note *r* to sec. 75.

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shall be entitled to vote if he possesses the other qualifications above mentioned, and has at the time of the election sufficient property to have entitled him to vote if he had been rated for such property; (*e*) and every person so claiming to vote shall name the property on which he votes, and the Returning Officer, at the request of any Candidate or voter, shall note the property in his poll book opposite the voter's name. (*f*)

Wards in which electors shall vote.

78. In towns and cities, every elector may vote in each ward in which he has been rated for the necessary property qualification; (*g*)

1.—In townships and incorporated villages divided into electoral divisions, no elector shall vote in more than one electoral division. (*h*)

When landlord and tenant both rated.

79. In case both the owner and occupant of any real property are rated severally but not jointly therefor, both shall be deemed rated within this Act. (*i*)

(*e*) See sec. 76.

(*f*) Every voter is required to name the property on which he votes, but the returning officer is only bound to note the property in his poll book at the request of any candidate or voter.

(*g*) Before this Act it was held that a voter entitled to vote in the ward in which he resided could not vote in any other ward. (*Anon*, 8 U. C. L. J. 76.) This section enables every elector to vote in *each* ward in which he has been rated for the necessary property qualification. The meaning of this probably is, that a voter is no longer restricted to one vote, but if qualified in several wards, may vote in each of such wards. If this be so, property will be, now more than formerly, represented.

(*h*) There is apparently a difference between wards and electoral divisions. In the case of the former, a voter qualified so to do, may, it is apprehended, vote in each ward. But in the case of the latter, no voter is entitled to vote in more than one electoral division; if he were so allowed, he would be enabled to give two or more votes for each candidate in the ward divided into electoral divisions.

(*i*) That is to say, that each may vote in respect of his interest, when rated severally, the one as proprietor, if a freeholder, and the other as tenant, if a resident householder (s. 75, 97, sub-s. 9). It is not necessary that the property should be assessed exclusively in the name of the person possessed to his own use. A landlord is so assessed where tenants occupy the premises; and he may, for purposes of qualification as a candidate, put together real properties, some occupied by himself and some by his tenants, to make up the assessed value required by the statute. (*The Queen ex rel. Shaw* v. *McKenzie*, 2 U. C. Cham. Rep. 36.)

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When joint owners rated together.

80. When any real property is owned or occupied jointly by two or more persons, and is rated severally but not jointly at an amount sufficient to give a qualification to each, then each shall be deemed rated within this Act, otherwise none of them shall be deemed so rated. (*j*)

PARLIAMENTARY ELECTORS.

Qualification of electors at Parliamentary Elections.

81. Every male person entered on the then last revised assessment roll for every city, town, village or township, as the owner or occupant of real property of the actual value,—in cities, of six hundred dollars; in towns, of four hundred dollars; in incorporated villages, of three hundred dollars; (*k*) and in townships, of two hundred dollars, shall be entitled to vote at all Parliamentary elections, subject to the provisions of the Act, chapter six of the Consolidated Statutes of Canada; except subsections numbered 1 and 2 of section four of the said Act, which are hereby repealed, in so far as they relate to Upper Canada. (*l*)

(*j*) This apparently applies to the case of joint owners or joint tenants. If each be rated for an amount sufficient to give a qualification, then each is to be deemed rated within the meaning of the section. The section apparently applies as much to canditates as electors, though placed under the head of "Electors." (*The Queen ex rel. McGregor* v. *Ker*, 7 U. C. L. J. 67.)

(*k*) So far the qualification for Municipal and Parliamentary elections is identical. But in the case of townships, while $100 is all that is required for Municipal elections, $200 is by this section made necessary as a qualification for Parliamentary elections.

(*l*) Certain public officers are disqualified from voting at Parliamentary elections, viz.—The Chancellor and Vice-Chancellors of Upper Canada, the Chief Justice and Justices of the Courts of Queen's Bench and Common Pleas in Upper Canada, all County Judges, all Commissioners of Bankrupts, all Recorders of cities, all officers of the Customs, all Clerks of the Peace, Registrars, Sheriffs, Deputy Clerks of the Crown and Agents for the sale of Crown Lands, and all officers employed in the collection of any duties payable to Her Majesty in the nature of duties of Excise. (Con. Stat. Can. cap. 6, sec. 1.) Not only is the vote of every such person null and void, but the person himself offending, subject to a penalty of $2,000. (*Ib.* sec. 2.) Besides it is provided that no returning officer, deputy returning officer, election clerk or roll clerk, &c., shall vote at any such election. (*Ib.* sec. 3.) No woman is under any circumstances entitled to vote at a Parliamentary election. (*Ib.* sec. 4.) It is the duty of the clerk of each municipality after the final revision and correction of the assessment rolls, forthwith to make out a correct alphabetical list of all persons entitled to vote at Parliamentary elections, together with other information made necessary for election purposes. (*Ib.* sec. 6.) The clerk failing to do as required in these respects, is subject to prosecution by indictment.

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MUNICIPAL ELECTIONS.

The Holding of, in Certain Places Prohibited.

Elections for Townships not to be in Cities, Towns or Villages, and no elections shall be in taverns.

82. No Election of Township Councillors shall be held within any City, Town or Incorporated Village, (*m*) nor shall any Election for a Municipality or any Ward thereof be held in a tavern or house of public entertainment licensed to sell spirituous liquors. (*n*)

First Elections in New and Extended Municipalities.

First elections when Corporations are newly erected or extended.

83. In case of the Incorporation of a new Township or Union of Townships; (*o*) and

2. In case of the separation of a junior Township from a Union of Townships; (*p*) and

3. In case of the erection of a Police into an Incorporated Village, or of the erection of a Village into a Town or of a Town into a City; (*q*) and

4. In case of an additional tract of land being added to an Incorporated Village, Town or City, or in case of a new division into Wards of a Town or City; (*r*)

(*Ib.* sec. 20. See also *The Queen* v. *Switzer*, 14 U. C. C. P. 470.) No person is entitled to vote at such an election unless his name appears on the list. (*Ib.* sec. 6, sub-sec. 5.) No question of qualification can be raised at such an election, except to ascertain whether the party tendering his vote, is the party intended to be designated in the alphabetical list. (*Ib.* sec. 5.) Proceedings may be had at any time before the issuing of the writ of election, for the correction of the list. (*Ib.* secs. 7 and 8.)

(*m*) It is only proper that the election for each Municipality should for the convenience of voters be held within the limits of that Municipality. Cities, Towns and Incorporated Villages are quite distinct from and independent of the Townships in which situate. It is therefore provided that no election of Township councillors shall be held within any City, Town or Incorporated Village.

(*n*) There may be a tavern where spirituous liquors are sold, which is not licensed to sell spirituous liquors. It is doubtful whether or not the words "licensed to sell spirituous liquors" extend to more than the immediate antecedent house of public entertainment. Contravention of the statute in either of the particulars mentioned would, it is believed, invalidate the election (see *The Queen ex rel. Allemaing* v. *Zoeger*, 1 U. C. Prac. R. 219; *The Queen ex rel. Preston* v. *Preston*, 2 U. C. Cham. R. 178.)

(*o*) Under secs. 27, 32.

(*p*) Under secs. 28, 29.

(*q*) Under secs. 10 to 15 inclusive.

(*r*) Under secs. 18, 16, 19.

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Times of elections.

5. In each of the foregoing cases, the first election under the Proclamation or By-Law, by which the change was effected, shall take place on the first Monday in January next after the end of three months from the date of the Proclamation, or from the passing of the By-law by which the change is made,(*s*) and until such day the change shall not go into effect. (*t*)

SUBSEQUENT ELECTIONS.

Places of elections.

84. Every Election shall be held in the Municipality or Police Village to which the same relates. (*a*)

To be fixed by by-law for Municipalities.

85. The Council of every City, Town and Village Municipality (including a Village newly erected into a Town, and a Town newly erected into a City), shall from time to time by By-law, (*b*) appoint the place or places for holding the next ensuing Municipal Election, otherwise the Election shall be held at the place or places at which the last Election for the Municipality or Wards or Electoral Divisions was held. (*c*)

Also for Police Villages.

86. The Council by which a Police Village is established shall, by the By-law establishing the same, name the place in the Village for holding the Election of Police Trustees. (*d*)

(*s*) The whole three months must expire. The day of the issue of the Proclamation or passing of by-law as well as the day of the election, must be excluded from the computation of time. (See *Blunt* v. *Heslop*, 8 A. & E. 577.)

(*t*) Not only is it declared that the first election must take place on a particular day named, but that *until* such day "the change shall not go into effect."

(*a*) See note *m* to sec. 82.

(*b*) *By by-law.* The appointment of the place by resolution would be a nullity. (*The Queen ex rel. Allemaing* v. *Zoeger*, 1 U. C. Prac. R. 219.)

(*c*) One Robert Gillis had a farm through which ran the division line between wards Nos. 2 and 3. His house stood on that part of the farm included in ward No. 2, but his barn on the part in ward No. 3. The Township Council passed a by-law that the election of Township Councillors for "ward No. 3," should be held at "Robert Gillis'." *Held*, that the by-law must be read as meaning some part of his property in ward No. 3, and that as the election was shown to have taken place in the house without the limits of the ward, it was void. (*The Queen ex rel. Preston* v. *Preston*, 2 U. C. Cham. R. 178.) The right of the Municipal Council to appoint the place or places for holding municipal elections may be "from time to time" exercised, and when once exercised, the places appointed continue to be the places for all future elections until otherwise directed by by-law. (See secs. 10, 27, 29, 84, 86.)

(*d*) On the petition of any of the inhabitants of an unincorporated Village, the Council of the County within which the Village is situate

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87. The Electors of every city shall elect three Aldermen for every Ward, on the first Monday in January, in the year one thousand eight hundred and sixty-seven, one of whom shall retire annually, in rotation, and on the first Monday of January in each year thereafter, shall elect one Alderman for each Ward, in the room of the retiring member, unless chosen by acclamation on the day of nomination. (*e*) Elections in Cities. *As amended by cap.* 52.

88. In Incorporated Towns having five Wards, there shall be two Councillors elected for each Ward, on the first Monday in January, in the year one thousand eight hundred and sixty-seven, one of whom shall retire annually in rotation; (*f*) and in towns having less than five Wards, there shall be three Councillors elected for each Ward, on the first Monday in January, one thousand eight hundred and sixty-seven, one of whom shall retire annually in rotation; (*g*) and on the first Monday in January in each year thereafter there shall be one Councillor elected for each Ward in all Towns. (*h*) In Towns.

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may by by-law erect the same into a Police Village (sec. 9); and, by the same by-law, under the section here annotated, name the place in the Village for holding the election of Police Trustees. Only one place is authorizied, and no power to change it, as in the case of Municipalities under the last section, appears to be given.

(*e*) This section is entirely new. It not only provides for the election of three Aldermen, instead of two for each ward as hitherto (see sec. 66, sub-sec. 2 and notes) but further, that they shall retire after 1867, in rotation by ballot (sec. 90) and that the electors shall in every year after 1867, elect one Alderman for each ward, in the room of the retiring member. This is somewhat analogous to the election and retirement of School Trustees. (Con. Stat. U. C. cap. 64, secs. 12, 13.) The office of Councilman for Cities is abolished.

(*f*) This section, like the preceding, is new. The principle of rotation contained in it is also new.

(*g*) Where a Town has five wards there shall be ten Councillors. Where less than five wards, three Councillors for each ward. So that according to this section a Town of four wards would appear to be entitled to twelve Councillors, while one of five wards can only have ten Councillors. This result could scarcely have been anticipated or intended by the Legislature. Besides, it is not consistent with sec. 66, sub-sec. 3, which declares that the Council of *every* town shall consist of the Mayor, who shall be the head thereof, and of "two Councillors for every ward."

(*h*) On the first Monday in January, 1867, the whole number of Councillors shall be elected for each ward of the Town, and they shall retire in rotation; and on the first Monday in January in each year thereafter, there shall be one Councillor elected for each ward in all Towns.

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Yearly elections of Councillors and Police Trustees.

89. The Electors of every Township and Incorporated Village Municipality shall elect annually, on the first Monday in January, the Members of the Council of the said Municipality; and on the second Monday in January, the Electors of every Police Village shall annually elect the Police Trustees of the Village; (*i*) and the persons so elected shall hold office until their successors are elected or appointed and sworn into office, and the new Council or Police Trustees is or are organized. (*j*)

Ballot to determine order of retiring.

90. At the first meeting of the Council of every City and Town, elected after the passing of this Act, it shall be determined by ballot, under the direction of the Clerk, which of the members shall retire in the first, second and third year respectively; and the term of office of each Councillor shall cease, according to the result of such ballot. (*k*)

First election in junior Township after separation.

91. When a junior Township of a Union has one hundred resident freeholders and householders on the then last Revised Assessment Roll, (*l*) the Council of the County shall, by a By-law to be passed before the thirty-first day of October, in the same year, (*m*) fix the place for holding the first annual election of Councillors in the Township, and appoint a Returning Officer for holding the same, and otherwise provide for the due holding of the election according to law. (*n*)

Ward divisions in United Townships.

92. In case of the separation of a Union of Townships, the existing division into Wards, if any, shall cease as if the same

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(*i*) The reason for the difference of time is not apparent. But the fact is, that while the members of Township and Incorporated Village Councils must be elected annually on the first Monday in January, the annual election of Police Trustees for Police Villages is postponed till the second Monday in January

(*j*) The elections must take place on the days named, and cannot take place on any other days. If any election do not so take place, appointments must be made pursuant to sec. 129, which appointments shall have the effect of elections. So that at no time and for no period are the Municipalities to be unrepresented. The Councillors are to hold office until their successors are elected or appointed, *and* sworn into office, &c.

(*k*) This section is new. It is not said in what manner the ballot is to be taken, further than the same is to be "under the direction of the Clerk."

(*l*) See notes to sec. 28.

(*m*) *By-law.* See note (*b*) to sec. 85. The time for doing the act authorized being limited, the act cannot be done after the day named, unless the language used is to be construed as directory only. (*Davison et al.* v. *Gill*, 1 East. 64.) This would appear to be a continuing provision, liable to be brought into play in any year by by-law passed before 31st October.

(*n*) See secs. 87 & 88, *et seq.*

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had been duly abolished by By-law, and the elections of Councillors shall be by general vote until the Township or Townships are divided into electoral divisions under the provisions of this Act. (n*)

ships to cease on dissolution or union.

93. The Election in Townships and Incorporated Villages of Reeves, Deputy Reeves and Councillors shall be by general vote, (o) and shall be held at the place or places where the last meeting of the Council was held, or in such other place or places as may be from time to time fixed by By-law.

Certain elections to be by general vote.

RETURNING OFFICERS.

94. The Council of every Municipality in which the election is to be by Wards or Electoral Divisions, (p) shall, from time to time, by By-law, appoint Returning Officers to hold the next ensuing elections. (q)

Returning Officers for elections by wards.

WHEN CLERKS TO BE EX-OFFICIO RETURNING OFFICERS.

95. In the case of a Municipality in which the election is not to be by Wards or Electoral Divisions, the Clerk shall be the Returning Officer at all elections, (r) after the first. (s)

When Clerk to be *ex officio* Returning Officer.

(n*) The Council of every Township may by By-law divide the same into two or more electoral divisions, and may from time to time repeal or vary the same (sec. 278.)

(o) This is a new and important section. In the first place it will be observed that Reeves and Deputy Reeves are to be elected by the people, and in the second place that the election is to be by general vote. Formerly Councillors only were elected by the people, and the Councillors then elected the Reeve and Deputy Reeve. Formerly also where there was an existing division of a Township or incorporated Village into wards, the election was had for a particular Councillor in each ward, and not by general vote. The intention of having Reeves and Deputy Reeves elected by the people, is to prevent men by combining in small bodies, in effect, to elect themselves to these offices. The intention of having a general vote is to destroy the sectional strife about the expenditure of money, which often arises where each Councillor looks upon himself as the representative of a particular ward and not of the whole Township. It is not a little singular that this Act, which makes Reeves and Deputy Reeves in Townships and incorporated Villages elective by the people, in Cities ~~and Towns~~ takes from the people the right they had to elect their Mayor (sec. 105.)

(p) See sec. 278.

(q) *By-law.* An appointment by resolution would not be sufficient. (See *The Queen ex rel. Allemaing* v. *Zoeger*, 1 U. C. Prac. R. 219.)

(r) Where the election is to be by wards or electoral divisions, the Township Councils appoint Returning Officers (sec. 94.) But where there are no wards or electoral divisions, it is here provided that the Clerk *shall be* the Returning Officer.

(s) First elections are otherwise provided for. See secs. 83 and 96.

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RETURNING OFFICERS FOR THE FIRST ELECTION IN VILLAGES.

For first election in Villages.

96. In every By-law establishing a Police or Incorporated Village, a Returning Officer shall be appointed, who is to hold the first election for such Village. (*t*)

After first election, Police Trustees to appoint.

2. In Police Villages, after the first election, (*u*) the Trustees thereof, or any two of them, shall, from time to time, by writing under their hands, (*v*) appoint the Returning Officer. (*w*)

IF THE RETURNING OFFICER BE ABSENT.

The absence of the Returning Officer provided for.

97. In case, at the time appointed for holding an election, the person appointed to be Returning Officer has died, or does not attend to hold the election within an hour after the time appointed, (*x*) or in case no Returning Officer has been appointed, (*y*) the electors present at the place for holding the election may choose from amongst themselves a Returning Officer; and such Returning Officer shall have all the powers, and shall forthwith proceed to hold the election and perform all the other duties of a Returning Officer.

THE RETURNING OFFICER TO BE A CONSERVATOR OF THE PEACE.

Returning Officers to be conservators of the peace; their powers.

98. The Returning Officer shall, during the election, act as a conservator of the Peace for the City or County in which the election is held; and he, or any Justice of the Peace having jurisdiction in the Municipality in which the election is held, may cause to be arrested, and may summarily try and punish by fine or imprisonment, or both, or may imprison or

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(*t*) The appointment is to be made by the by-law establishing the Village, and if not then made, may, it is presumed, be made pursuant to sec. 94.

(*u*) Which is provided for by the preceding sub-section.

(*v*) Police Villages, not being incorporated, of course have not a corporate seal.

(*w*) A distinction is to be observed between the appointment of the place for holding an election in a Police Village and the appointment of a Returning Officer to hold it. The place is appointed pursuant to sec. 85; the Returning Officer pursuant to the section here annotated.

(*x*) If the Returning Officer be not dead, but fail to attend, a full hour must elapse before the electors present can choose from among themselves a Returning Officer to supply his place, and when the substitute is so chosen it is apprehended the original Returning Officer cannot appear and take the business out of his hand. *Quære*—Does this section apply to the case of the Township Clerk dying or not attending, when Returning Officer under sec. 95?

(*y*) Which may happen when the appointment is not made either at the proper time, by the proper body, or in a proper manner.

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bind over to keep the peace, or for trial, any riotous or disorderly person who assaults, beats, molests or threatens any voter coming to, remaining at, or going from the election; (*a*) and, when thereto required, all constables and persons present at the election, shall assist the Returning Officer or Justice of the Peace, on pain of being guilty of a misdemeanor. (*b*)

MAY SWEAR IN SPECIAL CONSTABLES.

Special Constables may be sworn in.

99. Every Returning Officer or Justice of the Peace may appoint and swear in any number of Special Constables to assist in the preservation of the peace and of order at the election; (*c*) and any person liable to serve as Constable and required to be sworn in as a Special Constable by the Returning Officer or Justice shall, if he refuses to be sworn in or to serve, be liable to a penalty of twenty dollars, to be recovered to the use of any one who will sue therefor. (*c**)

PROCEEDINGS AT ELECTIONS IN TOWNSHIPS AND INCORPORATED VILLAGES.

Nomination meeting.

100. A meeting of the electors shall take place for the nomination of candidates for the offices of Reeve and Deputy Reeves, Councillors and Police Trustees, in townships, incorporated villages and police villages, at noon on the last Monday but one in December annually, at such place therein as shall from time to time be fixed by By-law. (*d*)

(*a*) In general, the Returning Officer will act under this section upon his own view. But when, instead of acting on facts observed by himself or within his own knowledge, he acts on the information of others, it is suggested he should take the regular information, and proceed as any other magistrate would be required to do under like circumstances. An example would be, when the complaint is an assault upon a voter coming to or returning from the election, committed at a distance from the poll. The main object of the section is however to empower the Returning Officer to act promptly on the spot in the hearing and determining of offences occurring at the poll; but in point of authority he is not so restricted.

(*b*) The word "Misdemeanor" in its usual acceptation is applied to all those offences for which the law has not provided a particular name; and they may be punished according to the degree of the offence by fine or imprisonment, or both. A misdemeanor is in truth any crime less than a felony. (1 Russ. on Crimes, 45.)

(*c*) It is the design of this section to confer additional powers on the Returning Officers, &c., of which it behoves all persons liable to serve as special constables to be advised and take notice.

(*c**) The penalty may, it is apprehended, though not so expressed, be sued for in any court of competent jurisdiction, for instance in a Division Court. (See *Brash q. t.* v. *Taggart*, 16 U. C. C. P. 415.)

(*d*) This section is new. It provides for nominations in the case of

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President. 1. The Clerk (or in his absence a Chairman to be chosen) shall preside at such meeting, of which the Clerk shall give at least six days' notice; (*e*)

If no more candidates than offices. 2. If only the necessary number of candidates to fill the vacant offices, shall be proposed and seconded, the Clerk or Chairman shall, after the lapse of one hour, declare such candidate or candidates duly elected; (*f*)

If more and poll demanded. 3. If more than the necessary number of candidates are proposed, and a poll is demanded by any candidate or elector, the

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elections in Townships, Incorporated Villages and Police Villages. The time and place for the nomination are both stated:

Time, at noon on the last Monday but one in December annually.

Place, at such place in the Municipality as shall from time to time be fixed by by-law.

The *proceedings* necessary at such nomination are hereinafter detailed.

(*e*) Two things are to be observed—the Chairman and notice. The choice of Chairman in the absence of the Clerk, though not so expressed, must, it is apprehended, be made by the electors present at the meeting of which at least six days notice must have been given.

Should a person other than the person assigned, preside at the meeting, the proceedings would in all probability be held void. (*The Queen* v. *Backhouse et al.*, 12 L. T. N. S. 579; *In re Hartley and Corporation of Emily*, 25 U. C. Q. B. 12; 1 L. C. G. 23.)

As to the notice—Where a statute says a thing shall be done so many days, or so many days at least, before a given event, the day of the thing done and that of the event must both be excluded. (*The Queen* v. *Justices of Shropshire*, 8 A. & E. 173; *Mitchel* v. *Foster*, 9 Dowl. P. C. 527.) ~~These suppose the day for the intended election to be 3rd January, notice thereof, to be good, would require to be given at latest on 23rd December preceding.~~

(*f*) The form of proposing and seconding is made necessary. If only the necessary number of candidates be proposed and seconded, the duty of the Clerk is simply to wait for one whole hour, and then if no more candidates have been proposed, to declare the candidates duly elected. In such case it would seem to be unnecessary that the electors should express any opinion with regard to the merits of those put in nomination, either by holding up of hands or otherwise. If more than the necessary number of candidates to fill vacancies be proposed, it is the duty of the Clerk to proceed as in the next sub-section directed. It would seem that where more persons are proposed and seconded than necessary, and after polling commenced all except the necessary number retire, the Returning Officer could not close the poll unless under the circumstances mentioned in succeeding sub-sections of this section. (See *The Queen ex rel. Horne* v. *Clark*, 6 U. C. L. J. 114.) The election is commenced when the Returning Officer receives the nomination of candidates. (*The Queen* v. *Cowan*, 24 U. C. Q. B. 606.) It is not necessary to constitute an election that a poll should be demanded.

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Clerk or Chairman shall adjourn the proceedings until the first Monday in January, when a poll or polls shall be opened in each electoral division, or if the municipality be not divided into electoral divisions, then at such place as the council shall by by-law determine for the election, at nine of the clock in the morning, and shall continue open until five of the clock in the afternoon, and no longer; (*g*)

Notice of persons proposed.

4. The Clerk or Chairman of the meeting shall, on the day following that of the nomination, post up in the office of the Clerk of the Municipality, the names of the persons proposed for the respective offices, and the Clerk shall provide the Returning Officer, or Officers in case of electoral divisions, with a certified list of the names of such candidates, specifying the offices for which they are respectively candidates; (*h*)

List of Voters

5. The Clerk shall, before the poll is opened, deliver to the

(*g*) A popular impression exists that the Returning Officer ought, when there are more than the necessary number of candidates, to take a show of hands, and that the omission to do so is an irregularity. The modern practice is no doubt to take a show of hands. But formerly there were several modes of expressing the opinion of the electors, which constituted an election by the view, either holding up of the hands, calling out the names of the candidates, or by dividing into separate bodies. When however a poll was demanded, these forms were unnecessary. (Clark on Elections, 160.) Not only must there be more than the necessary number of candidates proposed and seconded, but a poll must be demanded before an adjournment, with a view to an election, can be had. The poll may be demanded either by a candidate or an elector. When demanded, the proceedings must be adjourned until the first Monday in January, and a poll then opened, at 9 o'clock in the morning. The poll is to continue open "until five of the clock in the afternoon and no longer." Thus making necessary only one day's election and not two as formerly. It is necessary that during the hours for polling, the electors should have free access to the polling place. The fact that a large number of duly qualified electors could not cast their votes, is a sufficient reason for setting aside an election, if the result would have been affected by the unpolled votes. (*The Queen ex rel. Wilson* v. *Davis et al.*, Chambers, Richards, J., 8 U. C. L. J. 165.) In case, by reason of a riot or other emergency, the election is not commenced on the proper day, or is interrupted after being commenced, provision is made for an extension of the time for receiving votes. (Secs. 103, 104.)

(*h*) The duty of the Clerk or Chairman under this sub-section is two-fold, viz.:—

1. To post up, on the day following that of the nomination, in the office of the Clerk of the Municipality, the names of the persons proposed for the respective offices.

2. To provide the Returning Officer or Officers, in the case of electoral divisions, with a certified list of the names of such candidates, specifying the offices for which they are respectively candidates.

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Returning Officer for every electoral division, or police village, a list of the names, arranged alphabetically, of all male freeholders and householders rated upon the then last revised assessment roll for real property, lying in that electoral division or village, to the amount required to qualify them to vote at such election, and shall attest the said list by his solemn declaration; (*i*)

(*i*) It will be observed that the duty of the Clerk under this subsection is also two-fold, viz.:—

1. To deliver to the Returning Officer for every electoral division or police village, a list of the names arranged alphabetically, of all males freeholders and householders, rated upon the then last revised assessment roll for real property lying in that electoral division or village, to the amount required to entitle them to vote at such election.

2. To attest the list by his solemn declaration.

The law requires the Returning Officer to be furnished with a list of the names, arranged alphabetically, of all male freeholders and householders, rated upon the roll, &c., and it is obvious for what purpose. The purpose is, not to enable the Returning Officer himself to judge of the sufficiency or insufficiency of votes taken, but that all persons interested in the election may have a check at hand at the time of polling the votes. (*The Queen ex rel. Dundas* v. *Niles*, 1 U. C. Cham. Rep. 198; see also secs. 75, 76, 77.) Persons whose names are on the original roll, though omitted by accident from the list, may it seems claim a right to vote; but not persons whose names are on the list, though not on the original roll. (*The Queen ex rel. Helliwell* v. *Stephenson*, 1 U. C. Cham. Rep. 270.) The list furnished to the Returning Officer ought to be alphabetical, and if not so the Returning Officer should himself make it alphabetical. (*The Queen ex rel. Davis* v. *Wilson et al.* Chambers, Richards, J., 3 U. C. L. J. 165.) Where the Returning Officer was not furnished with the list, and notwithstanding proceeded with the election, *held*, that it was an irregularity which subjected the election to be avoided if the objection were taken by one qualified to urge it, although it might not *ipso facto* render the election void. *Held*, also, that the acquiescence of the candidates in the election being proceeded with under these circumstances, though it might preclude *them* from disputing the validity of the election on that ground, could not affect the right of a voter who was no party to such acquiescent arrangement. (*The Queen ex rel. Charles* v. *Lewis et al.* 2 U. C. Cham. R. 171.) In such a case, however, it would seem to be necessary to show that the absence or inaccuracy of the list prejudiced the election, or that some candidate or voter refused on that ground to proceed, and relied upon the objection. (*The Queen ex rel. Ritson* v. *Perry et al.* 1 U. C. Prac. R. 237.) It might perhaps also be necessary to show that the candidates returned were not eligible or had not in fact a majority of legal votes. (*Ib.*) Where the Returning Officer used the original roll instead of the list, having first announced that he concluded to do so and no one objected, the election was supported. (*The Queen ex rel. Hall* v *Grey*, 15 U. C. Q. B. 257.) It would also seem that it is no objection to the list that it was not verified as the statute requires, unless some objection be taken before or during the election. (*The Queen ex rel. Ritson* v. *Perry*, 1 U. C. Prac. R. 237.)

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6. The Clerk shall provide the Returning Officer with a Poll-book, and he, or his sworn Poll-clerk, shall enter in such book, in separate columns, the names of the candidates proposed and seconded at the nomination, and shall, opposite to such columns, write the names of the electors offering to vote at the election, and shall in each column in which is entered the name of a candidate voted for by a voter, set the figure "1" opposite the voter's name; (*j*) Poll-books. How kept.

7. In townships, incorporated villages and police villages, every Returning Officer shall, on the day after the close of the poll, return the poll-book to the Township Clerk, verified under oath before the said Clerk or any Justice of the Peace for the county or union of counties in which the said township, incorporated or police village may lie, as to the due and correct taking of the votes; (*k*) Returning the Poll-books.

8. The Clerk of the township, incorporated village or police village, (or person so appointed Chairman as aforesaid), shall add up the votes set down for each candidate in the respective poll-books, and ascertain the aggregate number of votes, and shall at the town-hall, or other place at which the nomination was held, at noon of the day following the return of the poll-book, publicly declare the Reeves and Councillors, or Reeve Deputy Reeve and Councillors, as the case may be, who have been elected; (*l*) Summing up votes. Declaring candidates elected.

9. In case two or more candidates have an equal number of votes, the said Clerk, whether otherwise qualified or not, shall Casting vote in case of ties

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(*j*) The entries in the poll-book are to be as follow:

1. The names of the candidates proposed and seconded at the nomination.
2. The names of the electors offering to vote at the election.
3. And in each column in which is entered the name of a candidate, the figure "1" opposite the voter's name.

(*k*) The poll-book must not only be returned to the Township Clerk on the day after the close of the poll, but be returned verified under oath. It is not, it will be observed, made the duty of the Returning Officer to add up the votes.

(*l*) The duties of the Clerk or Chairman, under this sub-section, are as follow:

1. To add up the votes set down for each candidate in the respective poll-books, and ascertain the aggregate number of votes.
2. To publicly declare the result of the election, at the town-hall or other place at which the nomination was held, at noon of the day following the return of the poll-book.

The duty of the Returning Officer is imperative. His failure in any material point to observe it, might invalidate the election.

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give a casting vote for one or more of such candidates, so as to decide the election, and except in such case the Clerk shall not vote at any such election. (*m*)

PROCEEDINGS AT ELECTIONS OF ALDERMEN IN CITIES AND COUNCILLORS IN TOWNS.

Elections, how conducted.

101. The proceedings at such elections (*n*) shall be as follows :

Nomination meeting.

1. A meeting of the Electors shall take place for the nomination of candidates for the offices of Aldermen in cities and of Councillors in towns, at noon on the last Monday but one in December, annually, in each ward or electoral division thereof, at such places therein as shall from time to time be fixed by By-laws of the said City or Town Councils; (*o*)

Notice.

2. The Returning Officer for each ward or electoral division, in cities and towns, or in his absence the Chairman to be chosen by the meeting, shall preside, and the Returning Officer shall give at least six days' notice of such meeting; (*p*)

(*m*) It would be well for the Clerk to pay close attention to this clause. No Clerk, whether qualified as an elector or not, is allowed to vote. The exception is, when two or more of the candidates have an equal number of votes. Then, whether otherwise qualified or not, he "*shall* give a vote for one or more (that is, when more than one is to be elected) of such candidates, so as to *decide* the election."

The Court will presume that a public officer acts properly and honestly till the contrary is shown; and where it is intended to charge the officer with unfairness or partiality, the case should be plainly stated and clearly made out. (*The Queen ex rel. Walker* v. *Hall*, 6 U. C. L. J. 138.) Where a Returning Officer, after closing the poll, received an affidavit from M. that his vote had been entered by mistake for relator, on which he altered his vote in the poll-book, and, the votes then being equal, gave his casting vote, the election was set aside. (*The Queen ex rel. Acheson* v. *Donoghue*, 15 U. C. Q. B. 454). In a similar case the Returning Officer was ordered to pay the relator's costs. (*The Queen ex rel. Mitchel* v. *Rankin*, 2 U. C. Cham. R. 161; *contra, The Queen ex rel. Coupland* v. *Webster*, 6 U. C. L. J. 89.) It has been held that a Returning Officer cannot, after the close of the poll, add his vote for a candidate, although he then for the first time discovers a tie between them. (*The Queen ex rel. Bulger* v. *Smith et al.*, 4 U. C. L. J. 18.) It is not said in the sub-section here annotated, when the Clerk is to give his casting vote, and it may be held that he may now do so at any time before the declaration, and at the declaration make known the result, and how he arrived at it.

(*n*) "*Such* elections," *i. e.*, elections of Aldermen in cities and Councillors in towns. The preceding section makes full provision for elections of Reeves, Deputy Reeves, Councillors and Police Trustees, in Townships, Incorporated Villages and Police Villages.

(*o*) See note *d* to sec. 100.

(*p*) See note *e* to sec. 100.

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If no more candidates than offices.

8. If only the necessary number of candidates to fill the vacant offices shall be proposed and seconded, the Returning Officer or Chairman shall, after the lapse of one hour, declare such candidates duly elected; (*q*)

If more, and poll demanded.

4. If more than the necessary number of candidates be proposed, and a poll is demanded by any candidate or elector, the Returning Officer or Chairman shall adjourn the proceedings until the first Monday in January, when a poll or polls shall be opened in each ward or electoral division, for the election, at nine of the clock in the morning, and shall continue open until five of the clock in the afternoon, and no longer; (*r*)

Lists of voters.

5. The Clerk of town or city shall, before the poll is opened, deliver to the Returning Officer for every or any ward or electoral division, a list of the names, arranged alphabetically, of all male freeholders and householders rated upon the then last revised assessment roll for real property lying in that ward or electoral division to the amount required to qualify them to vote at such election, and shall attest the said list by his solemn declaration; (*s*)

Poll books.

6. The Clerk of every town or city shall provide the Returning Officer of every ward or electoral division with a poll-book, and at every election at which a poll is demanded the Returning Officer or his sworn poll-clerk shall enter in such book, in separate columns, the names of the candidates proposed and seconded at the nomination, and shall, opposite to such columns, write the names of the electors offering to vote at the election, and shall, in each column in which is entered the name of a candidate voted for by a voter, set the figure "1" opposite the voter's name; (*t*)

How kept.

WHAT OATHS HE MAY ADMINISTER.

Returning Officer may administer oaths.

7. The Returning Officer or Chairman may administer all oaths or affirmations necessary at the election; (*u*)

(*q*) See note *f* to sec. 100.

(*r*) See note *g* to sec. 100.

(*s*) See notes *h*, *i*, to sec. 100.

(*t*) See note *j* to sec. 100.

(*u*) The Returning Officer should, on request of either of the candidates, or his agent (whether such agent be or be not a duly qualified elector), administer the necessary oaths or affirmations. (*The Queen ex rel. Gardiner* v. *Perry;* Hagarty, J.; May 12, 1857.) The refusal of an elector to take the oath is, if the relator would otherwise have had one majority, a good ground for setting aside the election. (*The Queen ex rel. Dillon* v. *McNeil*, 5 U. C. C. P. 137.)

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OATHS AND QUESTIONS THAT MAY BE PUT TO ELECTORS.

The only oaths to be required of voters.

8. At any election, or at any public vote in respect of a By-law which requires the assent of the electors, the only oaths or affirmations to be required of any person claiming to vote, are, that he is of the full age of twenty-one years, and is a natural-born subject of Her Majesty, or has obtained a certificate of naturalization from the Quarter Sessions, or was a resident of Canada before the eighteenth day of January, one thousand eight hundred and forty-nine; that he has been, if a householder, a resident within the municipality for which the election is held, or vote taken, for one month next before the election, and that he has not before voted at the election or on the By-law in the township or ward in which he is voting (*as the case may be*); and that he is the person named or purporting to be named in the list of voters (*or, in case of a new municipality, in which there has not yet been any assessment roll*), and that he is a freeholder or resident householder in (*naming the property entitling him to vote at the election*); and that he has not directly or indirectly received any reward or gift, nor does he expect to receive any, for the vote which he tenders at the election; and such oaths shall be administered at the request of any candidate or his authorized agent, and no inquiries shall be made of any such person except with respect to the facts specified in such oaths or affirmations; (*v*)

(*v*) The oath, so far as the elector is concerned, embraces the following points:

1. That he is of the full age of twenty-one years.
2. That he is a natural-born subject of Her Majesty, *or* has obtained a certificate of naturalization from the Quarter Sessions, *or* was a resident of Canada before the 18th January, 1849.
3. That he has been (if a householder) a resident within the municipality for which the election is held or vote taken, for one month next before the election.
4. That he has not before voted at the election, *or* on the by-law, in the township or ward in which he is voting.
5. That he is the person named, *or* purporting to be named, in the list of votes.
6. That he has not directly or indirectly received any reward or gift, nor does he expect to receive any, for the vote which he tenders at the election.

See secs. 75 and 76, as to the qualification of voters.

A Returning Officer who receives illegal votes, not on his list, may be made to pay costs. (*The Queen ex rel. Johnston* v. *Murney*, 5 U. C. L. J. 87.) Where a voter has parted with the property in respect to which he votes, though on the list, he has no legal right to vote. (*The Queen ex rel. Lutz* v. *Hopkins*, 7 U. C. L. J. 152.) If a Returning Officer, upon discovering an error in the entry of a vote, has the power to make the necessary correction, he must make it promptly, and only in

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9. The Returning Officer shall, at the close of the poll, add up the number of votes set down for each candidate, for the office of Alderman in cities and of Councillors in towns, and shall publicly declare the same, beginning with the candidate having the greatest number, and so on with the others, and shall thereupon publicly declare elected the candidate or candidates respectively standing highest on the poll; but where a ward is divided into two or more electoral divisions, each Returning Officer shall at the close of the poll return his poll-book to the City or Town Clerk, who shall as soon as possible thereafter add up the number of votes and publicly declare the candidate so elected; (*w*)

Returning Officer to declare result of the election.

10. In case two or more candidates have an equal number of votes, the Returning Officer, or in case of a ward divided into electoral divisions the Town or City Clerk, whether otherwise qualified or not, shall give a vote for one or more of such candidates, so as to decide the election; and, except in such case, no Returning Officer or Town or City Clerk shall vote at any election held by him. (*x*)

When to have casting vote.

102. The Returning Officer shall, on the day after the close of the election, return the poll-book to the Clerk of the Municipality from whom he received the copy of the voter's list, and also his solemn declaration thereto annexed, that the poll-book contains a true statement of the poll, and his certificate of the persons (*naming them*) who have been duly elected. (*a*)

Poll-books to be returned to the Clerk.

Attestation.

103. In case, by reason of riot or other emergency, an election is not commenced on the proper day, or is interrupted after being commenced and before the lawful closing thereof, the Returning Officer shall hold or resume the election on the following day at the hour of ten o'clock in the forenoon, and continue the same from day to day if necessary, for four days,

Election riotously broken up, to be resumed.

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a case where the mistake in making the entry is beyond doubt. (*Ib.*) A person otherwise qualified to vote is not disqualified by the simple fact of the change of residence from one ward to another of the same township. (*Ib.*) It has been held that names improperly added to the assessment roll at a Court of Revision, will, in the event of a scrutiny, be struck off. (*Ib.*)

(*w*) See note *l* to sec. 100.

(*x*) See note *m* to sec. 100.

(*a*) The Returning Officer is, within the time limited (the day after the close of the election), to return the poll-book, with a solemn declaration of the description mentioned. The consequence of neglect or disobedience is not here mentioned.

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until the poll has been open without interruption and with free access to voters for twelve hours in all or thereabouts, in order that all the electors so intending may have had a fair opportunity to vote. (*b*)

If election is prevented for four days, poll-book to be returned, and a new election ordered.

104. But in case the election has not, by the end of the fourth day from the day the same commenced or should have commenced, been so kept open for the said twelve hours, the Returning Officer shall not return any person as elected, but shall return his poll-book on the following day to the Head of the Municipality, certifying the cause of there not having been an Election, and a new election shall take place; and the Head of the Municipality shall issue his warrant accordingly. (*c*)

ELECTION OF MAYORS IN CITIES, AND OF MAYORS, REEVES AND DEPUTY REEVES IN TOWNS.

Election of Mayors, Reeves, &c.

105. Mayors of cities shall be elected by the members of the Council, at their first meeting in each year, (*d*) and Mayors,

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(*b*) It is necessary that during the hours of polling the electors shlal have free access to the polling place. (*The Queen ex rel. Wilson* v. *Davis et al.*, 3 U. C. L. J. 165.) In case, by reason of riot or other emergency, an election is not commenced on the proper day, or is interrupted after commencement, the election must be resumed the next day, and if necessary continued from day to day for four days, till the poll has been open without interruption and with free access to voters for the time mentioned, viz., twelve hours in all. The object, of course, is, that all the electors intending to vote may, notwithstanding riot or other emergency, have a fair opportunity to vote. If it be shown that, notwithstanding the expiration of the four days allowed, there was not a fair opportunity of voting, in consequence of which votes were lost, it is apprehended a new election will be ordered. (Sec. 104.)

(*c*) The new election is to take place in case the election has not within four days been kept open twelve hours, and the Returning Officer has not returned any person as elected, but has certified the cause of the failure. If the Returning Officer should so far forget his duty as to return any of the candidates elected, the election would no doubt be set aside. (*The Queen ex rel. Wilson* v. *Davis et al.*, 3 U. C. L. J. 165.) Where it was sworn that intending voters for an unsuccessful candidate were obstructed in approaching the polling place by a crowd controlled by one of the successful candidates, and neither the fact of the obstruction nor the control was unequivocally denied by that candidate, the election was set aside. (*The Queen ex rel. Gibbs et al.* v. *Branighan et al.*, 3 U. C. L. J. 137)

The tendency of modern decisions is not to compel a party to pay costs, unless it be shown that he really participated in the improper conduct for which the election is set aside. (*The Queen ex rel. Wilson* v. *Davis*, 3 U. C. L. J. 165.)

(*d*) This, so far as the election of Mayors is concerned, is a restoration of the old law. Before 1858, Mayors of cities were elected by the

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Reeves and Deputy Reeves in towns, shall be chosen by the electors of such towns, at the annual election to be held on the first Monday in January, unless chosen by acclamation on the day of nomination. (*e*)

106. The qualification of a Mayor in cities shall be the same as that of Alderman in cities, (*f*) and the qualification of Mayor, Reeve and Deputy Reeve in towns, shall be the same as that of a councillor in towns. (*g*) Qualification of.

107. A meeting of the electors shall take place for the nomination of candidates for Mayor, Reeve and Deputy Reeve at the Town Hall, on the last Monday but one in the month of December before the annual election, at ten of the clock in the forenoon. (*h*) Time and place for nominating.

108. The Town Clerk shall preside at such meeting, or, in case of his absence, the Council shall appoint a person to preside in his place; if the clerk or the person so appointed does not attend, the electors present shall choose a Chairman or person to officiate from among themselves. (*i*) The Clerk to preside.

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members of the City Council. In 1858 a change to election by the people was made. The change was not found to work advantageously, and hence the restoration of the law to what it was formerly.

(*e*) The distinction between Mayors of cities and Mayors of towns as to the persons entitled to elect, is to be remarked. While in the case of cities the Mayor is to be chosen by the Council, in the case of a town the Mayor is still to be chosen by the electors, and not only Mayors of towns but Reeves and Deputy Reeves are to be so chosen. The latter, so far as Reeves and Deputy Reeves are concerned, is new, Reeves and Deputy Reeves always, till this act, having been chosen by the members of Council.

(*f*) *i. e.*, freehold to $4,000, or leasehold to $8,000. (Sec. 70.)

(*g*) *i. e.*, freehold to $800, or leasehold to $1,600. (Sec. 70.) In case there are not at least two persons in the Town qualified to be elected for each seat in the Council, no qualification beyond the qualification of an elector is necessary. (*The Queen ex rel. Bender* v. *Preston*, 7 U. C. L. J. 100.)

(*h*) See note *g* to sec. 100.

(*i*) The Council should provide for the absence of the Clerk, if at all apprehended or expected. Should they fail to do so, the electors present may choose a chairman. Should the electors do so, it is submitted the chairman so chosen would have a right to conduct the nomination to its termination, notwithstanding the presence in the mean time of the Clerk, or a person appointed by the Council as his substitute. The proceedings at the meeting, if not presided over by the officer or person assigned, would in all probability be held absolutely void. See note *e* to sec. 100.

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With powers of a Returning Officer.

109. Such Clerk or Chairman shall have all the powers of a Returning Officer. (*j*)

If only one candidate proposed for an office.

110. If only the necessary number of qualified candidates be proposed within one hour by any elector present at such meeting for any of the said offices, the Clerk or Chairman shall declare such candidates duly elected. (*k*)

If more, and a poll is demanded, the election to be by wards.

111. If more candidates than the necessary number are proposed for any of the said offices, and if a poll is demanded, the Clerk or Chairman shall, on the following day, post up in the office of the Clerk the names of the persons proposed, and give notice thereof to the Returning Officer for every ward or electoral division. (*l*)

Duration of poll.

112. In case of a contest in an election for the office of Mayor, Reeve or Deputy Reeve, the Returning Officer for every ward or electoral division shall keep the poll open for the full time required by law for taking the votes, though there may be no contest for the other offices for which he holds the election. (*m*)

Poll-books to be kept,

113. Every Returning Officer shall enter in his poll-book, in separate columns, the names of the candidates for the office of Mayor, Reeve or Deputy Reeve, and of Councillors in towns, and shall, in the column in which is entered the name of a candidate for Mayor, Reeve or Deputy Reeve, or Councillor, voted for by any voter, set the number "1" opposite the voter's name. (*n*)

(*j*) See sec. 98, *et seq.*

(*k*) See note *g* to sec. 100.

(*l*) When a poll is demanded, it is, by the section under consideration, made the duty of the Clerk or Chairman, on the following day, to post up in the office of the Clerk the names of the persons proposed, and to give notice thereof to the Returning Officer for every ward. It is not clear whether the notice to the Returning Officer for each ward must be done on the day following the demand of a poll. That the notice must be posted up on that day, is clear beyond question, and the notice should of course be given without any unnecessary delay.

(*m*) The votes, where there is a contest, as well for the office of Mayor as of the other offices for which the election is held, should be taken concurrently. It may, however, happen, either that there is no contest for "the other offices," (Aldermen or Councillors,) or that the election to those offices has taken place before the election of Mayor is closed. In either event, or on any such event, the poll must be kept open to receive the votes for Mayor "for the full time required by law," viz., eight hours. (Sec. 101, sub-sec. 4.) The object of this section is to provide against any misapprehension on the subject.

(*n*) Only one poll-book is required, and that is to contain in separate

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114. Every Returning Officer shall, on the day after the close of the poll, return the poll-book to the City or Town Clerk, verified by his solemn declaration. (*o*)

And returned to the Clerk.

115. The Town Clerk shall add up the number of votes set down for each candidate for Mayor, Reeve and Deputy Reeve (*as the case may be*), in the respective poll-books so returned, and acertain the aggregate number of such votes; and in case a poll has been taken, and the poll-books have been returned for every ward or electoral division, the Clerk shall, at the Town Hall, at noon of the day following the return of the poll-books, declare elected the candidate or candidates having the largest number of votes polled. (*p*)

Clerk to add up poll-books and declare the result.

116. In case two or more candidates for Mayor, Reeve or Deputy Reeve have an equal number of votes, the Town Clerk, whether otherwise qualified or not, shall give a casting vote for one or more of such candidates, which vote shall decide the election, but except in such cases, no Town Clerk shall vote at any election. (*q*)

Casting vote if no majority for any Candidates.

117. The necessary declarations of office and qualification (*r*) may be administered to the members of the Council and Mayor elect in cities and towns by the Clerk thereof. (*s*)

Declarations of office; how made, &c. *As amended by Cap. 52.*

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columns the names of the candidates for the office of Mayor, Reeve, Deputy Reeve, as well as the names of the candidates for the offices of Councillors in towns, &c.

(*o*) The poll-book is not merely to be returned within the time specified, but to be verified by a solemn declaration.

(*p*) It does not appear to be necessary that a candidate, to be successful, should have a majority of the whole number of votes polled, but to have "the largest number of votes polled" that is polled for any one candidate. In the event of there being an equality of votes for two or more candidates, the election is to be decided under section 116 of this Act.

(*q*) The power of the Town Clerk to give a casting vote can only be exercised when two or more candidates have "an equal number of votes; and the casting vote, when given for one or more of the candidates, is "to *decide* the election." See note *m* to sec. 100.

(*r*) For the terms of the declaration, and before whom to be made, see secs. 178, 179, 180.

(*s*) It is enacted by sec. 182, that "the head *and other members of the Council, &c., shall* make the declaration of office and qualification before some court, judge, recorder, police magistrate *or other justice of the peace* having jurisdiction in the municipality," &c. In the section under consideration it is directed that "declarations of office and qualification *may* be administered to the members of the Council and Mayor elect in cities and towns, by the Clerk thereof."

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No other business before declaration.

118. No other business shall be proceeded with at the said meeting until the said declarations have been administered to all the members who present themselves to take the same. (*t*)

If no return for one or more wards.

119. If no return has been made for one or more wards, in consequence of no election having been held therein, or of the election having been interrupted through riot or other cause, the Clerk shall declare the want of return for such ward or wards, or electoral divisions, and the cause thereof. (*u*)

If no return for one or more wards; proceedings in such case.

As amended by Cap. 52.

120. In case no return be made for one or more wards, in consequence of non-election, owing to interruption by riot or other cause, the members of Council elect being at least a majority of the whole members of the Council when full, shall elect one of the Aldermen elect in cities, to be Presiding Officer, (*a*) at which Election the Clerk shall preside; (*b*) and such officer shall take the necessary declarations and possess all the powers of Mayor, until a poll for such ward, wards, or electoral division or divisions, has been held under a warrant in the manner provided for in the one hundred and twenty-fifth section of this Act. (*c*)

When Poll completed, Clerk to add votes and declare result; when and where.

121. When a poll has been duly held in each of such wards, and the poll-books returned to the Clerk, the Clerk shall add up the number of votes for Mayor, Reeve, Deputy Reeves, and Councillors, and in cities for Aldermen, therein set down for the respective candidates, and ascertain the aggregate number of votes for Mayor, Reeve or Deputy Reeves, Councillors or Aldermen, contained in such last-mentioned poll-books, together with the votes contained in the poll-books previously returned for the other wards. and shall, at noon on

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(*t*) It is apprehended that before electing a Mayor, when that election, under sec. 105, devolves upon the Council, the members ought to take the necessary declarations. Such an election would, it is believed, be deemed "business" within the meaning of this section. What is meant by "the said meeting," is now left in some obscurity. The old law, corresponding with the preceding section, provided that declarations of office should be made at the first meeting. The first meeting is probably still intended.

(*u*) The declaration of the Clerk as to the want of return for one or more wards is to be followed by the action of the Council described in the next succeeding section.

(*a*) *Shall elect one*, &c., of course having previously taken the necessary declarations of qualification and of office. See note *t* to sec. 118.

(*b*) See note *l* to sec. 100.

(*c*) This section is designed to ensure a return from every ward before the right to the office of Mayor is finally determined.

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the next day, at the Town Hall, declare elected Mayor, Reeve or Deputy Reeve (*as the case may be*), the candidate having the greatest number of votes polled; and in cities, whenever the return has been made under such warrant, and the Alderman or Aldermen so elected has or have been qualified as such, the election of Mayor of such city shall be proceeded with at the next meeting of the Council, in the same manner as is provided by the one hundred and fifth section of this Act. (*d*)

Election of mayor in cities.

122. The person or persons so elected shall forthwith make the necessary declaration of office and assume the same accordingly. (*e*)

Declaration and assumption of office.

DUTIES OF MAYORS.

123. The Mayor shall be deemed the Head of the Council, and the Head and Chief Executive Officer of the Corporation; and it shall be his duty to be vigilant and active at all times in causing the law for the Government of the City or Town to be duly executed and put in force; to inspect the conduct of all subordinate Officers in the Government thereof, and as far as may be in his power, to cause all negligence, carelessness and positive violation of duty to be duly prosecuted and punished, and to communicate from time to time to the Council, all such information, and recommend such measures as may tend to the improvement of the finances, the police, health, security, cleanliness, comfort and ornament of the City or Town. (*f*)

Mayor to be the Head of the Council; His duties.

(*d*) The candidate to be declared elected is the one having "the greatest number of votes polled," *i. e.*, not a majority of the whole number of votes polled, but the greatest number of votes polled for any one candidate compared with the number of votes polled for other candidates.

(*e*) See sec. 117 and notes.

(*f*) This section defines the position of Mayor and then defines his duties.

His position is "the Head of the Council" and "the Head and Chief Executive Officer of the Corporation."

His duties are as follows:—

1. To be vigilant and active at all times in causing the law for the Government of the City or Town to be duly executed and put in force.
2. To inspect the conduct of all subordinate officers in the government thereof.
3. To cause as far as may be in his power, all negligence, carelessness and positive violation of duty, to be duly prosecuted and punished.
4. To communicate from time to time to the Council, all such information and recommend such means as may tend to the improvement of the finances, the police, health, security, cleanliness, comfort and ornament of the City or Town.

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ELECTION WHEN SEATS VACATED, &c.

Seats vacated by crime, insolvency, absence, &c.

124. In case a member of council be convicted of felony or infamous crime, or be declared a bankrupt, or be charged in execution for debt, and remains in close custody, or upon the gaol limits for one month, or applies for relief as an insolvent debtor, or assigns his property for the benefit of creditors, or in case a *nulla bona* has been returned against him, or he absents himself from the meetings of the council for three months without being authorized by a resolution of the council entered on its minutes, his seat in the council shall thereby become vacant. (*g*)

No remedy can be had by action against the Mayor who is the head of the corporation, for not sealing a bail, in the absence of a binding contract on the corporation equivalent to a remedy on the contract against the corporation, had it been duly made. (*Fair* v. *Moore*, 3 U. C. C. P. 484.) It is to be presumed that a Mayor refusing to seal or sign a public document was intending to act honestly in the discharge of his duty, and so he would be entitled to notice of action and the other protections extended to public officers by Con. Stat. U. C., cap. 126. (*Moran* v. *Palmer*, 13 U. C. C. P. 450; s. c. *Ib.* 528.)

A bill will lie in equity by some of the inhabitants of a Municipality alleging an illegal misapplication of its funds by the Mayor. (*Paterson* v. *Bowes*, 4 Grant, 170.) The Attorney General is not a necessary party to such a suit. (*Ib.*) Where the Mayor of a city secretly contracted to purchase at a discount a large number of the debentures of the city, which it was expected would be issued under a contemplated by-law of the City Council, and was afterwards himself an active party in procuring and giving effect to the by-law subsequently passed, he was held to be a trustee for the City of the profit derived from the transaction. (*The City of Toronto* v. *Bowes*, 4 Grant, 489, affirmed in Appeal, 6 Grant, 1, and afterwards affirmed by the Privy Council.)

(*g*) The contingencies which will have the effect of vacating a seat in the Council are eight in number, as follows:—

1. Being convicted of felony or infamous crime.
2. Being declared a bankrupt.
3. Being charged in execution for debt.
4. Remaining in close custody or upon the gaol limits for one month.
5. Applying for relief as an insolvent debtor.
6. Assigning property for the benefit of creditors.
7. *Nulla bona* being returned to an execution against him.
8. Absence from the meetings of the Council for three months without being authorized by a resolution of the Council entered on the minutes.

Death is not mentioned among the contingencies, but as to it the necessary consequence is vacation of office. See secs. 125, 150, and 151.

Where the office becomes vacant through any other contingency than death, and the person whose seat is vacant insisted on holding it, the proper remedy against him is *quo warranto* procedure and not a writ of mandamus on the Mayor to hold a new election. (*The Queen* v. *The Mayor of the Town of Cornwall*, 25 U. C. Q. B. 293.)

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125. In any case provided for by the one hundred and twentieth or one hundred and twenty-fourth sections, (*h*) or in case a person elected to a council neglects or refuses to accept office, or to make the necessary declarations for office within the time required, (*i*) or in case a vacancy occurs in the Council caused by death, judicial decision or otherwise, (*j*) the Head of the Council for the time being, or in case of his absence, or of his office being vacant, the Clerk, or in case of the like absence or vacancy in the office of the Clerk, one of the members of the Council (*k*) shall forthwith, (*l*) by warrant under the signature of such Head, Clerk or Member, and under the corporate seal, require the Returning Officer appointed to hold the last election for the municipality, ward and electoral division respectively, or any other person duly appointed to that office, to hold a new election to fill the place of the person neglecting or refusing as aforesaid, or to fill the vacancy. (*m*) New elections provided for.

126. The person thereupon elected shall hold his seat for the residue of the term for which his predecessor was elected or for which the office is to be filled. (*n*) Term of office.

127. In case such non-election, neglect or refusal as aforesaid, occurs previous to the organization of the Council for Non-election of Members not to pre-

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(*h*) That is, in case a new ward election is required under sec. 120, or a seat has been vacated under sec. 124.

(*i*) *i. e.*, on the day appointed for the first meeting of the Council, see secs. 117, 118.

(*j*) *Or otherwise*—The object is to provide for every state of circumstances that may render a new election necessary. It is a question how far this section and sec. 150 are reconcilable.

(*k*) The order must be observed. First, the head; if no head, then the Clerk; if neither head nor Clerk, then one of the members of the Council. See note *e* to sec. 100.

(*l*) Where a thing is directed to be done by a Statute "*forthwith*" it means within a reasonable time. (*The Queen* v. *Justices of Worcester*, 7 Dowl. P. C. 789.) The word "immediately" is more strictly construed. (*The King* v. *Justices of Huntingdonshire*, 5 D. & R. 588. *The Queen* v. *Aston*, 1 L. M. & P. 491.)

(*m*) The person to be appointed is the person who was appointed to hold the last past election, unless some other has been appointed by the Council to hold casual elections, or to hold the particular election. It does not appear to be left to the discretion of the Head, Clerk or member, who issues the warrant to nominate the Returning Officer. The warrant is to be under the signature of the person issuing it, and to be under the seal of the Corporation.

(*n*) *i. e.*, shall hold his seat subject to the contingencies mentioned in sec. 124.

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vent organization of Council.

the year, the warrant for the new election shall be issued by the Head or a member of the Council for the previous year, or by the Clerk in like manner as provided for by the one hundred and twenty-fifth section, but such neglect or refusal shall not interfere with the immediate organization of the new Council, provided a majority are present of the full number of the Council. (*o*)

Time for holding and notice of new election.

128. The Returning Officer shall hold the new election at furthest within eight days after receiving the warrant, and shall, at least four days before the election, post up a public notice thereof under his hand in at least four of the most public places in the municipality, ward or electoral division. (*p*)

APPOINTMENTS, IF ELECTION NEGLECTED.

Appointment if election neglected or declined.

129. In case at any annual or other election, the electors, from any cause not provided for by the one hundred and third and one hundred and fourth sections, (*q*) neglect or decline to elect the members of Council for a municipality on the day appointed, or to elect the requisite number of members, (*r*) the

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(*o*) Five Councillors were elected in January. At their first meeting, on 17th January, only one made the declaration of qualification, and a doubt having been raised as to the remaining four, in consequence of some employment held by them under the Corporation, they delayed in order to consult the County Judge. On the 19th January they met again and organized themselves, but on the same day the Reeve for the previous year issued his warrant to elect four other Councillors who were returned, and on the 31st January these four with the man who had first qualified, met and claimed to be the Council. *Held*, that the second election was invalid, for the parties first elected not having *refused* to qualify, but only delayed, and having done so within the twenty days allowed, there was no ground for a new election. (*In re Corporation of Township of Asphodel and Sargant et al.*, 17 U. C. Q. B. 593.) A mandamus was therefore ordered to the Clerk to deliver up the papers to the Council first chosen. (*Ib.*)

(*p*) The new election is to be held at furthest "within eight days" after receipt of warrant; and it is the duty of the Returning Officer, "at least four days" before the election, to post up a public notice as directed. Where a thing is to be done within a certain number of days, the first and last days are generally inclusive (*Ridout* v. *Orr*, 2 U. C. Prac. R. 231; S. C., 4 U. C. L. J. 87; *Moore* v. *Grand Trunk Railway Co.*, 2 U. C. Prac. R. 227; S. C., 4 U. C. L. J. 20; *Cameron* v. *Cameron*, 2 U. C. Prac. R. 259; S. C., 4 U. C. L. J. 114); and where a thing is to be done "at least" a certain number of days "before," the day of the thing done and that of the event should both be excluded. (*The Queen* v. *Justices of Shropshire*, 8 A. & E. 173; *Mitchell* v. *Foster*, 9 Dowl. P.C. 527.)

(*q*) Which provides for the failure of an election by reason of a riot or other emergency.

(*r*) The power to proceed under this section may be exercised, first, in case the electors neglect or decline to elect the necessary members

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other members of the Council, or if there are none, then the members for the preceding year, or the majority of them, respectively, shall appoint as many qualified persons as will constitute or complete the number of members requisite; (*s*)

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on the day appointed for the election, and, secondly, in case they neglect or decline to elect the requisite number of members.

(*s*) There is a difference between an election and an appointment. (*The Queen ex rel. Beaty* v. *O'Donoghue et al.*, 3 U. C. L. J. 75; see also sec. 132 of this Act.) An *election*, whether by the electors at large or by the members of the Council, is by vote, and usually consists in the choice of the members of the Council by the electors of the municipality, or of the head of the Council by the members of the Council elect; both of which proceedings are in general essential to the organization of the Council. (Note *s* to sec. 127.) An *appointment* is, properly speaking, an act of the Council after it has been organized. Thus: the Clerk and other officers are appointed, not elected, by the Council. (See sec. 152.) The section under consideration speaks of appointments, not of elections. It therefore becomes material to consider precisely under what circumstances the power of appointment under the section can be exercised. If there be an *entire* failure to elect members on the day fixed for the purpose, the power to appoint would of course devolve on the Council of the preceding year, which, having been duly organized, continues in office until superseded by the organization of a new Council. But if the failure to elect be only *partial*, that is to say, if the failure be to elect the requisite number of members, there is more difficulty in interpreting the meaning of the Legislature, as expressed in this section. In such an event, it is declared that "the other members of the Council, or if there be none, then the members for the preceding year, or the majority of them respectively, shall appoint," &c. Does the word "majority" refer to the new or incomplete Council, or does it refer only to the old and complete Council? If it refers to the former as well as the latter, does it do so under all circumstances? Is there any difference in this respect between a majority and a quorum? Is it necessary that there should be such a majority as constitutes a quorum? There is much room for argument, and the editor cannot do more, in the absence of decided cases, than express his individual conviction. It requires a majority of the *whole* number of members of a Council to form a quorum. (Sec. 142.) The decision of the question turns more or less on the word "majority." As applied to the old Council, it undoubtedly implies a majority of the whole number of members. If applicable to the new Council, the question is, whether it means a majority of the *full* members of that Council also, or only a majority of those elected, though less than a majority of the whole: in other words, whether the expression, "or if there are *none*," means none at all, or none competent to organize as a Council. Less than a majority of the whole number of members requisite could not, it is apprehended, organize. But even on the word "requisite," as used in the section, the same question presents itself in another form. Does it mean requisite to complete the full number of the Council, or only requisite to complete a sufficient number to enable them to organize? If, when the Council is incomplete, the members elect, no matter how few or how many, could appoint the remainder, and if, from any cause, a majority

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and the persons so appointed shall accept office and make the necessary declarations under the same penalty in case of refusal or neglect, as if elected. (*t*)

CONTESTED ELECTIONS.

Trial of contested elections or right to elect.

130. In case the right of any Municipality to a Reeve or Deputy Reeve or Reeves, or in case the validity of the election or appointment of Mayor, Warden or Reeve or Deputy Reeve, Alderman, Councillor or Police Trustee, is contested (*a*) the same may be tried in term or vacation by a Judge of either of the Superior Courts of Common Law, or the senior or officiating Judge of the County Court of the County in which the election or appointment took place; (*b*) and when the

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of the whole Council only were chosen, it would devolve upon the minority to appoint the majority—a thing which, it is submitted, the Legislature never contemplated. Were this the case, in the city of Toronto for instance, with a Council ordinarily, under the new law, of eighteen members, if from any cause returns should be made by one ward only, the three aldermen chosen for that ward would have it in their power to appoint the remaining fifteen members of the Council. This would be absurd, and dangerous to municipal government. It is upon the whole submitted, but not without some doubt, that to enable a new but incomplete Council to appoint under this section, there must be elected at least a majority of the whole number necessary to enable the Council to organize; and that if there be not that number, or if there be none, it devolves upon the Council of the preceding year to appoint all (or the number deficient) of their successors.

(*t*) See sec. 178, *et seq.*

(*a*) Two matters are stated as subjects that may be contested.

1. The *right* of a Municipality to a Reeve or Deputy Reeve or Reeves, which must depend on the number of freeholders and householders on the last revised assessment roll. (Sec. 66, sub-secs. 3, &c.)

2. The *validity* of the election or appointment of Mayor, Warden or Reeve or Deputy Reeve, Alderman, Councillor or Police Trustee.

Until the passing of the Municipal Institutions Act, Con. Stat. U. C. cap. 54, the only mode by which the right of a Municipality to a Reeve or Deputy Reeve could be contested was an information in the nature of a *quo warranto*. (*The Queen ex rel. Hart* v. *Lindsay*, 18 U. C. Q. B. 51.) Not until the passing of that Act was there any power in a summary manner to determine the validity of an appointment. (*The Queen ex rel. Beaty* v. *O'Donoghue*, 3 U. C. L. J. 75.)

(*b*) Before the summary mode of trial of contested elections prescribed by the Municipal Act, the only remedy was the tedious and expensive one of information in the nature of a *quo warranto*, and the cases where the provisions of the Municipal Act is inapplicable, that remedy must still be adopted. (*The Queen ex rel. Davy & Bogart*, 2 U. C. Prac. R. 18; *The Queen ex rel. Hart* v. *Lindsay*, 18 U. C. Q. B. 51.) Where an information in the nature of a *quo warranto* is asked for on behalf of an individual it must, if allowed, be exhibited in the name of the master of the Crown office. (*Ib.*) The summary mode

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right of a Municipality to a Reeve or Deputy Reeve or Reeves is the matter contested, any Municipal elector in the County may be the relator, and when the contest is respecting the validity of any such election or appointment as aforesaid, any candidate at the election, or any elector who gave or tendered his vote thereat, may be the relator for the purpose. (*c*)

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prescribed by the Municipal Act is, so far as applicable, intended as a substitute for the proceeding by *quo warranto* information. (*The Queen ex rel. White* v. *Roach*, 18 U. C. Q. B. 226.) The general practice is as much as possible to confine parties aggrieved to the relief to be obtained under the statute. (*In re Kelly and Macarow*, 14 U. C. C. P. 457.)

(*c*) The relator is the person upon whose application the jurisdiction of the Judge is put in motion. It is to be observed that when the right of a municipality to a Reeve or Deputy Reeve or Reeves is the matter of contest *any* Municipal elector *in the County* may be the relator, and when the contest is respecting the validity of any such election or appointment aforesaid "any candidate at the election, or any elector who gave or tendered his vote at the election," may be a relator. The right to be a relator is, as regards the last mentioned subject of contest, thus confined to two classes; first, candidates; second, electors; and the right of the latter is restricted to such electors as either voted or tendered their votes at the election. It is not enough for him to show that he "protested and voted" against the person elected. (*The Queen ex rel. White* v. *Roach*, 18 U. C. Q. B. 226.) The interest of the relator is not established by the ordering of the writ. (*The Queen ex rel. Shaw* v. *Mackenzie*, 2 U. C. Cham. R. 36.) It is presumed that if the election of a head of a corporation, not being a mayor of a city or town, be questioned, any member of the council who either voted or tendered his vote for such head, would be an "elector" within the meaning of the section.

It is not necessary that a relator who was a candidate should show in his application to oust the successful candidate that he himself is qualified to accept office. (*The Queen ex rel. Mitchell* v. *Adams*, 1 U. C. Cham. R. 203.) An elector who himself has been instrumental in electing a candidate, will not in general be allowed afterwards to complain of the election of that candidate. (*The Queen ex rel. Loyall* v. *Ponton*, 2 U. C. Prac. Rep. 18; *The Queen ex rel. Rosebush* v. *Parker*, 2 U. C. C. P. 15; *In re Kelly and Macarow*, 14 U. C. C. P. 457; *The Queen ex rel. Grayson* v. *Bell*, 1 U. C. L. J. N. S. 130.) Upon similar principles it has been held that a councillor who is instrumeutal in the election of a particular person as Reeve or Deputy Reeve, cannot afterwards be allowed to move against the person so elected Reeve or Deputy Reeve. (*The Queen ex rel. Rosebush* v. *Parker*, 2 U. C. C. P. 15.) It is not desirable that the Clerks of Municipal Corporations having the custody of the papers of the Corporation should be relators in *quo warranto* proceedings to unseat members of the Councils of which they are Clerks. (*The Queen ex rel. McMullen* v. *De Lisle*, 8 U. C. L. J. 291.) All the Judges, whether of Superior or County Court, named in this section, possess concurrent and co-ordinate jurisdiction. But where a judge of the Superior Court was of opinion against a sitting member, he declined to withhold his judgment, upon the ground that

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PROCEEDINGS FOR THE TRIAL THEREOF.

Time for limited, and security and proof required.

131. The proceedings for the trial shall be as follows:

1. If within six weeks after the election, or one month after acceptance of office by the person elected, (*d*) the relator (*e*) shows by affidavit (*f*) to any such judge, (*g*) reasonable grounds for supposing that the election was not legal, or was not conducted according to law, or that the person declared elected thereat was not duly elected, (*h*) and if the relator

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there was a prior relation at the instance of a different relator against same defendant for same cause, pending before a County Court Judge, which relation it was sworn was collusive and intended to protect the defendant in the enjoyment of office contrary to law. (*The Queen ex rel. McLean* v. *Watson*, 1 U. C. L. J. N. S. 71.)

(*d*) The first point for consideration is the time within which the application is to be made, that is, "within six weeks after the election, or one calendar month after the acceptance of office by the person elected." In the computation of the six weeks, the day of the election is to be excluded. So it would appear that six weeks at all events is allowed, to impeach the election, although the office may have been accepted more than a calendar month. If the application be not made within the six weeks, the test is then whether the office has been accepted more than one calendar month. (*The Queen ex rel. Rosebush* v. *Parker*, 2 U. C. C. P. 15.) The application must not only be made within the time limited, but be made as the practice directs. (*The Queen ex re'. Telfer* v. *Allan*, 1 U. C. Prac. R. 214.) Therefore, where there was no written motion paper, as required by Rule No. 1, and the statement was not signed, as required by Rule No. 2, the application failed (*Ib.*, see Appendix); and if the time limited be allowed to elapse without an application, the relator will not be allowed to file an information in the nature of a *quo warranto*. (*Reg. ex rel. White* v. *Roach*, 18 U. C. Q. B. 226.)

(*e*) *Relator.* See note *c* to sec. 130.

(*f*) There should be at least two affidavits: the one of the relator, to the effect that he believes the grounds mentioned in the statement to be well founded; the other an affidavit of the relator or other person, setting forth fully and in detail the facts and circumstances which support the application. (Rule No. 2.) But though the affidavit of the relator may be sufficient to obtain the writ, the relator is an incompetent witness to establish the case at the trial, and therefore other evidence is required. (*The Queen ex rel. Carroll* v. *Beckwith*, 1 U. C. Prac. R. 278.) It seems, though it has not been expressly decided, that the attorney of the relator may act as a commissioner for taking the affidavits. (*The Queen ex rel. Blaisdell* v. *Rochester*, 12 U. C. Q. B. 630.)

(*g*) *i. e.*, either a Judge of the Superior Courts of common law, or the senior or officiating Judge of the County Court of the county in which the election or appointment took place. (Sec. 130.)

(*h*) The grounds of the application are here specified, viz., either that the election was not legal, *or* was not conducted according to law, *or* that the person declared elected was not duly elected. In one sense

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enters into a recognizance, (*i*) before the Judge, or before a Commissioner for taking bail, in the sum of two hundred dollars, with two sureties (to be allowed as sufficient by the

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the first branch of the clause involves the second, and the second the third. If the elections have not been conducted according to law, the election would not be legal, and the person declared elected could not in all probability be "*duly* elected." But the converse of the rule will not hold. The election may have been conducted according to law, and yet the person declared elected not have been duly elected, as where he is not qualified to be elected.

The following may be the form of the statement:

IN THE QUEEN'S BENCH (*or* COMMON PLEAS).

The statement and relation of ——, of ——, who complaining that ——, of —— (*here inserting the names and additions of all, if more than one person*), hath (*or have*) not been duly elected, and hath (*or have*) unjustly usurped and still doth (*or do*) usurp the office of ——, in the Town of —— (*or* Township of ——, *as the case may be*), in the County (*or* United Counties) of ——, under the pretence of an election held on ——, at ——, in the said County (*or* United Counties). [And (*when it it is claimed that the relator, or the relator and another, or others, ought to have been returned*), that (*here name the party or parties so entitled*) was (*or* were) duly elected thereto, and ought to have been returned at such election], and declaring that he the said relator hath an interest in the said election as a ——, states and shows the following causes why the election of the said —— to the said office should be declared invalid and void. [And (*when so claimed*) the said —— (*naming the party or parties*) be duly elected thereto].

First—That (*for example*) the said election was not conducted according to law in this, that, &c.

Second—That the said —— was not duly or legally elected or returned in this, that, &c.

Third—That, &c.

Signed by the relator in person, or by C. D. his attorney.

NOTE.—Where the intention of the relator is to impeach the election as altogether void, in which event, as the office cannot be claimed for any other or others, the portion of the above and succeeding forms relating thereto should be omitted.

(*i*) The following may be the form of the recognizance:

IN THE QUEEN'S BENCH (*or* COMMON PLEAS).

UPPER CANADA, County (*or* United Counties of——). Be it remembered, that on the —— day of ——, in the year of our Lord one thousand eight hundred and ——, before me ——, of ——, Chief Justice (*or* a Justice, *or* a Commissioner for taking bail) in Her Majesty's Court of Queen's Bench (*or Common Pleas*) for Upper Canada, cometh ——, of ——, of ——, and ——, of ——, and acknowledge themselves severally and respectively to owe to ——, of —— (*here inserting the name or names of the person whose election is complained against*), as follows, that is to say, the said —— the sum of two hundred dollars, and the said —— and —— the sum of one hundred dollars each, upon condition that if the said —— do prosecute with effect the writ of summons in the nature of *quo warranto* to be issued on an order of fiat to be made at the instance and upon the relation of the said ——, against

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Judge upon affidavit of justification), (*j*) in the sum of one hundred dollars each, conditioned to prosecute the writ with effect or to pay the party against whom the same is brought any costs which may be adjudged to him against the relator, the Judge shall direct a writ of summons in the nature of a *quo warranto* to be issued to try the matters contested; (*k*)

Writ of *quo warranto*.

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the said ——, to show by what authority he (*or* they) the said —— claims (*or* claim) to be (*here state the office so claimed*) and why he (*or* they) the said —— should not be removed therefrom, [and (*where so claimed by the relator*) why he the said relator (*or* the party *or* parties *entitled*) should not be declared duly elected, and be admitted to the said office]; and if the said —— do pay to the said —— all such costs as the said Court of —— (*or* the Judge presiding in Chambers, at the City of Toronto, in the County of York, or the Judge of the County Court of the County of ——) shall direct in that behalf, then this recognizance to be void, otherwise to remain in full force.

Taken and acknowledged the day and year first above mentioned,
Before me ——

(*j*) The following may be the form of affidavit of justification:

IN THE QUEEN'S BENCH (*or* COMMON PLEAS).

I, A. B., of, &c., one of the sureties in the recognizance hereto annexed, make oath and say as follows:

1. That I am a freeholder (*or* householder, *as the case may be*), residing at, &c.

2. That I am worth property to the amount of one hundred dollars over and above what will pay all my just debts (*if bail in any other action, add* "and every other sum for which I am now bail").

3. That I am not bail in any other action or proceeding (*or*, except for E. F., at the suit of G. H., in the Court of, &c., in the sum of, &c.)

And I, C. D., of, &c., the remaining surety in the recognizance hereto annexed, make oath and say as follows:

1. That I am a freeholder, &c. (*as before.*)

The above named deponents, A. B. and C. D., were severally sworn before me, at, &c., in the County of, &c., this —— day of ——, A.D. 18—. } A. B. C. D.

A Commissioner, &c.

(*k*) The following may be the form of the Judge's fiat:

IN THE QUEEN'S BENCH (*or* COMMON PLEAS).

Upon reading the statement of ——, of ——, in the County of ——, complaining of the undue election and usurpation of the office of ——, by ——, [and (*if so, stating*) that the said —— (*relator or other person named*) was (*or* were) duly elected, and ought to have been returned to the said office], and upon reading the affidavits filed in support of the said statement; and also upon reading the recognizance of the said ——, and sureties therein named, and the same being allowed as sufficient; I do order that a writ of summons do issue, calling upon the said —— (*the party whose election is complained of*) to show by what authority he (*or* they) the said —— (*the party whose election is complained of*) now exercises or enjoys (*or* exercise and enjoy) the said office, [and

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2. In case the relator alleges that he himself or some other person has been duly elected, the writ shall be to try the

When the relator claims to be elected.

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why (*if so claimed*) he (*or they*) the said —— should not be removed therefrom, and the said —— (*relator or other person or persons named*) should not be declared duly elected, and be admitted thereto], returnable before, &c.

Dated this —— day of ——, 18—.

The following may be the form of writ:

UPPER CANADA.

VICTORIA, by the Grace of God, &c.

To ——, of ——, &c., in the County (*or* United Counties) of ——.

We command you (*and each of you*) that you (*and each of you*) be and appear before the Chief Justice or other Justice of our Court of Queen's Bench or Common Pleas for Upper Canada, presiding in Chambers, at the Judges' Chambers in our City of Toronto, on the eighth day after the day on which you shall be served with this writ, then and there to answer and show to such Chief Justice or Justice by what authority you claim to use, exercise or enjoy the office of ——, which office, upon the relation of ——, having as he says an interest in the election to the said office as a ——, we are informed that you have usurped and do still usurp [and that (*if so claimed*) the said —— (*relator or party or parties mentioned*) was (*or* were) and should have been declared duly elected and admitted thereto], and further to do and receive all those things which our said Chief Justice or Justice shall thereupon order concerning the premises.

Witness, the Honorable ——, Chief Justice of our said Court of —— (*or other Justice in whose name the writ is tested*), at Toronto, this —— day of ——, 18—, and in the —— year of our reign.

To the writ must be attached a copy of the relator's statement of objections and grounds, and of the names and additions of the persons who shall have made the affidavits upon which the writ issued. (Rule 103.)

The notice may be in the following form:

IN THE QUEEN'S BENCH (*or* COMMON PLEAS).

THE QUEEN, upon the relation of ——, against ——.

To —— and ——, named in the within (*or* annexed) writ of summons.

The within (*or* annexed) writ of summons has been issued at my instance and relation; and a statement concerning the premises, whereof a copy is hereunto annexed, is filed in the office of the Clerk of the Crown in this Court (*or* with the Clerk in Chambers at the city of Toronto), together with affidavits supporting the same; and the names and additions of the deponents to the said affidavits are hereunder written. And you are served with the said writ of summons to the intent that you do appear and answer, as herein commanded, or otherwise judgment will be given against you by your default, and your election to the therein mentioned office will be declared invalid, and you will be removed

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validity both of the election complained of and the alleged election of the relator or other person; (*l*)

When several are complained of.

3. In case the grounds of objection apply equally to two or more persons elected, the relator may proceed by one writ against such persons; (*m*)

All to be tried by the same Judge.

4. Where more writs than one are brought to try the validity of an election, or the right to a Reeve or Deputy Reeve or Reeves as aforesaid, all such writs shall be made returnable before the Judge who is to try the first, and such Judge may give one judgment upon all, or a separate judgment upon each one or more of them, as he thinks fit; (*n*)

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therefrom [and the said —— (*the relator, or* ——, *the party or parties, if any, alleged to be entitled*) therein named be declared duly elected, and will be admitted thereto in your place].

A. B. in person,
or by
C. D. his Attorney.

The above mentioned deponents are:

——, of ——.
——, of ——.

(*l*) It seems to be well understood that before a Judge will entertain an application, not merely to make void the election of the party complained against, but to declare the relator or some other person elected in his stead, it must be shown, to the satisfaction of the Judge, that notice had been given of the disqualification of the successful candidate at such a time and in such a manner as must have made the electors aware that if they voted for that candidate their votes would be thrown away. (*The Queen ex rel. Clarke* v. *McMullen*, 9 U. C. Q. B. 467.)

(*m*) It has been held that a private relator has no right by a writ of summons, in the nature of a *quo warranto*, either to attack the Township Council by name upon grounds which, if mentioned, must necessarily lead to a dissolution of the body, or to attack the whole Council in one proceeding, through the individual names of every member of it. (*The Queen ex rel. Lawrence* v. *Woodruff*, 8 U. C. Q. B. 336.)

(*n*) At an election there may be several candidates; so there may be several persons elected to office. One person may see fit to contest the election of any successful candidate; so another person may see fit to contest the election of another of the successful candidates. Each relator complying with this statute, may have his own separate and independent writ. In this way there may be several writs brought to try in fact the validity of the same election. When such is the case, all the writs are to be made returnable before the Judge who is to try the first. One object is obvious, and that is, to preserve uniformity of decision. Where the first relation is collusive, and merely intended to protect the defendant in the enjoyment of office, it may be disregarded. (*The Queen ex rel. McLean* v. *Watson*, 1 U. C. L. J. N. S. 71.)

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5. The writ shall be issued by the Clerk of the Process of the said Superior Courts, or by the Deputy Clerk of the Crown in the County in which the election took place, (*o*) and shall be returnable before the Judge in Chambers of the Superior Court at Toronto, or before the Judge of the County Court at a place named in the writ, (*p*) upon the eighth day after service, computed exclusively of the day of service, or upon any later day named in the writ; (*q*)

Writ, who to issue, and return day thereof.

(*o*) If not tested on the day it was issued, it would be irregular. (*The Queen ex rel. Linton* v. *Jackson*, 2 U. C. Cham. R. 18.) But the irregularity may be waived by appearance. (*Ib.*) Where the proceedings were irregular, and relator notified defendant not to appear, it was held that the same relator was not precluded from making a second application. (*The Queen ex rel. Metcalfe* v. *Smart*, 10 U. C. Q. B. 89.)

(*p*) Although a County Court Judge may grant a fiat for the writ, it is always to be issued out of one of the superior courts. It is suggested that the fiat should state before what Judge the writ is to be returnable. It has been held that a County Court Judge may order the writ to issue returnable before a Judge of a superior court. (*The Queen ex rel. Lutz* v. *Williamson*, I U. C. Prac. R. 94.) In such case it is the duty of the relator to see that the proper papers are transmitted to Toronto. (*Ib.*)

(*q*) Thus, a writ served on Monday of one week would be returnable on Tuesday of the ensuing week, "or upon any later day named in the writ."

The following may be the form of affidavit of service:

IN THE QUEEN'S BENCH (*or* COMMON PLEAS).

THE QUEEN, on the relation of ——, against ——.

——, of ——, in the ——, maketh oath and saith, that he did, on the —— day of ——, personally serve the above named defendant (*or* defendants) with the annexed writ of summons, by delivering to him (*or* each of them) a true copy thereof, on which said copy was endorsed a written notice, a copy whereof is hereto annexed, and to which said copy (*or* copies respectively) of the said writ was annexed a written copy of a statement of the above named relator, a copy of which said copy of statement is also hereunto annexed: and the deponent further saith, that the minute (*or* minutes) of the said service, written on the said writ of summons, was (*or* were) so written by this deponent within twenty-four hours after such service.

Sworn at ——, in the County of ——, this —— day of ——, 18—.

Before me ——.

Upon the return of the writ, the party or parties summoned may appear either in person or by attorney. (Rule No. 4, Appendix.) The manner of appearance is by endorsing on the back of the relator's statement, attached to the motion papers, the words, "The within named C. D. appears in person (*or by attorney, as the case may be*) to answer the grounds of objection to his election which are within stated." (*Ib.*) If on the return no appearance be entered, the Judge

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Returning Officer may be made a party.

6. The Judge before whom the writ is made returnable, or is returned, may, if he thinks proper, order the issue of a writ of summons at any stage of the proceedings to make the Returning Officer a party thereto; (*r*)

Service to be personal, unless excused by Judge.

7. Every writ under this section shall be served personally, (*s*) unless the party to be served keeps out of the way to avoid personal service; in which case the Judge, upon being

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sitting in Chambers may before rising on that day direct an entry to be made on the back of the statement, as follows: "The within named C. D. (*and E. F.*) being duly summoned, hath (*or have*) not appeared to answer the matters within objected." (Rule No. 5, Appendix.) This entry, if not made on the day directed, may be made on a subsequent day. (*Ib.*) The Judge may thereupon, on that or any subsequent day, proceed to hear and determine the matter. (Rule No. 7, Appendix.)

(*r*) "Is made returnable, *or* is returned." This expression appears to be used in order that a writ "returnable" on the face of it before a Judge named therein, may be "returned" to and acted upon by any Judge presiding in Chambers, or the Judge presiding in the County Court for the time being, according as the Judge mentioned in the writ belongs to a superior or an inferior court.

The writ to make a Returning Officer a party may be in the following form:

UPPER CANADA.

VICTORIA, by the Grace of God, &c.

Whereas, upon the relation of ——, in our Court of Queen's Bench (*or* Common Pleas), ——, it hath been ordered that a writ of summons should issue ——, to show by what authority he (*or* they) claims or exercises (*or* claim or exercise) the office of ——; and whereas it appears to our Justices of our Court of Queen's Bench (*or* Common Pleas), before whom the said writ hath been made returnable (*or as the case may be*), that you were the Returning Officer by whom the said —— hath (*or* have) been returned as duly elected to the said office, and that it is proper you should be made a party to the proceeding aforesaid: These are therefore to summon you to be and appear before the Chief Justice or other Justice of our Court of Queen's Bench (*or* Common Pleas) for Upper Canada, presiding in Chambers, at the Judges' Chambers, in our City of Toronto, on ——, then and there to answer such matters and things as shall then and there be objected against you, and further to do and receive all those things which said Court or said Justice shall thereupon order concerning you in the premises.

Witness, &c.

This writ must be served, with the like papers annexed, and the service thereof proved in like manner as is provided for other writs of summons. (Rule 6, Appendix.) The appearance and subsequent proceedings must also be the same. (*Ib.*)

(*s*) "Personal service" of a writ has never been defined by the Legislature. Each case is left to depend on its own particular circumstances. The Courts have not held it necessary to put process into the actual corporeal possession of the defendant, to constitute personal

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satisfied thereof, by affidavit or otherwise, may make an order for such substitutional service as he thinks fit; (*t*)

8. The Judge before whom the writ is returned, may allow any person entitled to be a relator to intervene and defend, and may grant a reasonable time for the purpose; and any intervening party shall be liable or entitled to costs, like any other party to the proceedings; (*u*)

The Judge may allow persons to intervene.

9. The Judge shall, in a summary manner, upon statement and answer, without formal pleadings, hear and determine the validity of the election, or the right to a Reeve or Deputy Reeve or Reeves, and may by order cause the assessment rolls, Collectors' rolls, poll-books and any other records of the election to be brought before him, and may inquire into the facts on affidavit or affirmation, or by oral testimony, or by issues framed by him and sent to be tried by jury by writ of trial directed to any Court named by the Judge, or by one or more of these means, as he deems expedient; (*v*)

Judge shall try summarily.

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service, but have looked more to the object of the service—timely notice to defendant of intended legal proceedings against him. (Har. C. L. P. A., note *f* to sec. 34, p. 73.) In general a copy of the writ should be left with defendant, and the original shown to him if he desire to see it. *Goggs* v. *Huntingtower*, per Alderson, B., 1 D. & L. 599.) The copy of the writ must be left with, and not merely shown to defendant. (*Worley* v. *Glover*, 2 Str. 877.) Though defendant refuse to take the copy, if the person serving it bring it away with him, the service will be defective. (*Pigeon* v. *Bruce*, 8 Taunt. 410.) Where the copy was thrust through the crevice of a door to defendant, who had locked himself in, the service was held to be sufficient. (*Smith* v. *Wintle*, Barnes, 405.) Service upon a wife, agent or servant, is not personal service. (*Frith* v. *Donegal*, 2 Dowl. P. C. 527; *Davies* v. *Morgan*, 2 C. & J. 237; *Goggs* v. *Huntingtower*, 1 D. & L. 599; *Christmas* v. *Eicke*, 6 D. & L. 156.)

(*t*) Personal service can only be dispensed with under the circumstances here mentioned. (*The Queen ex rel. Arnott* v. *Marchant*, 2 U.C. Cham. R. 167.)

(*u*) No elector unless one who has voted or tendered his vote at the election, can be a relator. See note *c* to sec. 130. A relator is not necessarily bound to prove his interest unless denied. (*The Queen ex rel. Bartliffe* v. *O'Reilly*, 8 U. C. Q. B. 617.)

(*v*) The duty and the powers of the Judge are here mentioned.

The duty is, in a summary manner, upon statement and answer, without formal pleadings, to hear and determine, &c.

The powers are:

1. To cause the assessment rolls, collectors' rolls, poll-books, and any other records of the election, to be brought before him.

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And remove admit or confirm.

10. In case the election complained of be adjudged in-

2. To inquire into the facts,
On affidavit or affirmation,
Or by oral testimony,
Or by issues framed and sent to be tried by jury,
Or by one or more of these means, as he may deem expedient.

The following may be the form of writ of trial:

[L.S.] VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the faith.

To the Judge of the County Court of the County of ——

Greeting:

Whereas, upon the trial of the validity of an election of ——, chosen upon the —— day of ——, to be —— for the Township of ——, (*or as the case may be*) in the County of ——, and which election hath been complained of by E. F., as the relator, alleging (*as the case may be*) that he himself, or that he and C. D., &c., or that C. D., &c., was or were duly elected, and ought to have been returned, it hath become material to ascertain whether (*here stating concisely the issues to be tried*) and whereas it is desired by ——, our Chief Justice (*or* Justice) of our Court of Queen's Bench (*or* Common Pleas) before whom the same is pending, that the truth of such matters as aforesaid may be found by a jury: We do, therefore, pursuant to the statute in such case made and provided, command you, that by twelve good and lawful men of the County of ——, who are in nowise akin to the said E. F., the relator in the said case, or to the said (*the other party or parties, naming him or them,*) and who shall be sworn truly to try the truth of the said matters, you do proceed to try the same accordingly; and when the jury shall have given their verdict on the matters aforesaid, we command you that you do forthwith make known to our said Chief Justice (*or* Justice) what shall have been done by virtue of this writ, with the finding of the jury hereon indorsed.

Witness, the Honorable ——, Chief Justice (*or* Justice) of our said Court at Toronto, this —— day of ——, in the —— year of our reign.

The following may be the form of indorsement of verdict thereon:

I hereby certify that on the —— day of ——, before me, L. M., Judge of the County Court of the County (*or* United Counties) of——, came as well the within named relator as the within named (*the other party or parties*) by their attorneys (*or as the case may be*) and the jurors of the jury, by me duly summoned as within commanded, also came, and being sworn to try the matters within mentioned on their oath, said that, &c.

The relator is not allowed at the hearing to object to the election of the party or parties complained against, or to support the election or elections of the person or persons alleged to have been duly elected on any ground not specified in the statement on which the summons was moved. (Rule 9, Appendix.) Still the Judge may, if he see fit, entertain upon his own view of the case any substantial ground of objection to or in support of the validity of the election of either or any of the parties which may appear in the evidence before him. (*Ib.*) When the party or parties summoned has or have appeared, no more formal answer need be made by him or them to the relators case than by affidavits filed in answer. (Rule No. 10, Appendix.) But the

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valid, (*w*) the Judge shall forthwith, by writ, cause the person

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Judge may in his discretion require from either or any of the parties further affidavits or the production of any such evidence as the law allows. (*Ib.*) None of the proceedings had in any case for trying the validity of an election, or which follow the determination thereof, are to be set aside or held void on account of any irregularity or defect, which shall not in the opinion of the judge before whom the objection is made, be deemed such as to interfere with the just trial and adjudication of the case upon the merits. (Rule No. 18, Appendix.) Contempts in disobeying writs of summons, *certiorari*, *mandamus* or other process, rule or order of court or of any judge thereof, acting in the execution of the powers conferred by this Act, are to be certified into the court from which the writ of summons issued, to be dealt with like other contempts of of such court in other cases. (Rule No. 16, Appendix.) The forms given may be changed when necessary, at the discretion of the Judge who tries or determines the case, to adapt the same to such particular case. (Rule No. 17, Appendix.)

It has been held that a Judge of a County Court cannot, in determining the validity of a contested election, incidentally decide against the validity of a Township By-law. (*The Queen ex rel. McLaughlin* v. *Hicks*, 5 U. C. L. J. 89.)

(*w*) The following may be the form of the judgment:

In the Queen's Bench (*or* Common Pleas) the Queen on the relation of —— against —— (*and* "A. B. Returning Officer made a party by the order of a Judge.")

Be it remembered, that on the —— day of ——, in the year of our Lord one thousand eight hundred and ——, at the Judges' Chambers in the City of Toronto, before me, ——, Chief Justice (*or* Justices) of Her Majesty's Court of Queen's Bench (*or* Common Pleas) came as well the above named relator by —— his attorney as the above named —— by his (*or* their) attorney and service of the writ of summons hereunto annexed, having been duly proved upon affidavit and upon the said day and upon other days thereafter at the Chambers aforesaid, having heard and read the statement and proofs of the said relator, touching and concerning the usurpation by him alleged against the said —— of the office of —— in the said writ of summons mentioned (and of the alleged misconduct of said A. B. as Returning Officer at the said election) [and (*if so*) the election of (*the party or parties named*) thereto], and the answers and proofs of the said ——, and having heard the said parties by their counsel (*or as the case may be*), and upon due consideration of all and singular the premises now, that is to say, this —— day of ——, in the year aforesaid, I do adjudge and determine:

First—That the said relator had, at the time of his making his aforesaid complaint, an interest in the election to the said office of —— as a ——.

Second—That, &c.

Third—That, &c.

Fourth—That the said —— hath (*or* have) usurped, and doth (*or* do) still usurp the said office, and that he (*or* they) be removed therefrom [*or* that the election of —— to the said office was void, and that he

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found not to have been duly elected to be removed, and in case the Judge determines that any other person was duly elected, the Judge shall forthwith order a writ to issue caus-

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(*or* they) be removed therefrom (*as the judgment may be*)]. And that the said relator [*or* the said (*naming the party or parties whose election is affirmed, when he or they are adjudged to be entitled to the said office*)] was (*or* were) duly elected thereto, and ought to have been returned, and is (*or* are) entitled in law to be received into, and to use, exercise and enjoy the said office.

And I do adjudge and determine that the said —— do not in any manner concern himself (*or* themselves) in or about the said office, but that he (*or* they) be absolutely forejudged and excluded from further using or exercising the same, under pretence of the said election [and further, that the said (*naming the relator or party whose election is affirmed*) be (*or* be respectively) admitted to the said office in his (*or* their) place (*or* places.)]

And I do further order, adjudge and determine, that the said relator do recover against the said —— his costs and charges by him in and about the said relation and the prosecution thereof expended, to be taxed in the said Court.

All which the said writ of summons, and the said judgment, and the statements, answers and proofs of the said relator and of the said——, and all other things had before me touching the same, I do hereby certify and deliver into the said Court, there to remain of record as a judgment of said Court, according to the form of the statute in such case made and provided. E. F., *J.*

The following may be the conclusion of a judgment for the defendant, to follow the word *affidavit*, in the foregoing form:

Thereupon now at this day, that is to say, on the —— day of —— aforesaid, at the Judges' Chambers, at Toronto aforesaid, all and singular the relation and proofs of the said relator, and the answers and proofs of the said —— being seen and fully understood, I do consider and adjudge that the said office of —— so claimed by him (*or* them) the said —— be allowed and adjudged to him (*or* them), that the said —— be dismissed and discharged of and from the premises above charged upon him (*or* them) and also that he (*or* they) the said —— do recover against the said relator his (*or* their) costs by him, (*or* them respectively) laid out and expended in defending himself (*or* themselves) in this behalf. All which, &c., (*as in the judgment for the relator.*)

The following may be added if costs allowed and taxed.

"Afterwards that is to say, on the —— day of ——, in the —— year of the reign of our Lady the Queen, cometh, the said ——, and prayeth that his (*or* their) said costs, so as aforesaid adjudged to him (*or* them), be taxed and assessed according to the form of the statute in such case made and provided, and the said costs of the said ——, in and about his (*or* their) prosecution (*or* defence) aforesaid, and (*when the Returning Officer is a party*) of the said ——, in and about his defence aforesaid, so as aforesaid adjudged to him (*or* them), are now here accordingly taxed and assessed as follows, that is to say, the costs of the said —— at the sum of —— [and the costs of the said

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ing such other person to be admitted; (*x*) and in case the Judge determines that no other person was duly elected instead of the person removed, the Judge shall by the writ cause a new election to be held; (*y*)

If all the members ousted, &c., writ for new election to go to the Sheriff.

11. In case the election of all the members of a Council be adjudged invalid, the writ for their removal and for the election of new members in their place, or for the admission of others adjudged legally elected, and an election to fill up the remaining seats in the Council, shall be directed to the Sheriff

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—— (*when Returning Officer entitled thereto*) at the sum of ——,] and the said ——, in mercy, &c."

(*x*) The following may be the form of writ for removal, &c.

VICTORIA, &c.

To the Corporation of —— (*the town, township, or city of.*)

Whereas on the —— day of —— in the year of our Lord one thousand eight hundred and —— at the Judges' Chambers in the City of Toronto, before —— Chief Justice (*or* one of the Justices) of our Court of Queen's Bench (*or* Common Pleas) for Upper Canada, it was by the said Chief Justice (*or* Justice) adjudged and determined that —— of —— had usurped, and did then usurp, the office of —— [and that —— was (*or* were) duly elected thereto, and ought to have been returned, and was (*or* were) entitled in law to be received into, und to use, exercise and enjoy the said office,] all which has, by the said Chief Justice (*or* Justice) been duly certified into our Court of Queen's Bench (*or* Common Pleas), pursuant to the statute in that behalf. Now, we being willing that speedy justice be done in this behalf, as it is reasonable, command that the said (*the person or persons, naming him or them, whose election has been declared invalid*) do not in any manner concern himself (*or* themselves) in or about the said office, but that he (*or* they) be absolutely forejudged, removed and excluded from further using or exercising the same, under pretence of his (*or* their) election thereto.* [And we do further command that the said (*the person or persons, naming him or them, who has or had been adjudged lawfully elected*) be forthwith admitted, received and sworn into the said office, to use, exercise and enjoy the same.] And we do hereby command you and every of you to obey, observe, and do all and every act, matter and thing that may be necessary, on the part of you or any of you in the premises, according to the purport, true intent and meaning of these presents, and of the statutes in that behalf, and that you make known to our Court of Queen's Bench (*or* Common Pleas) at Toronto, on the —— day of ——how this writ shall have been executed.

Witness, &c.

(*y*) The following may be the form of the writ for new election:

VICTORIA, &c.

To the Corporation of —— and to any returning officer or other person or persons to whom it shall of right belong to do any act necessary to be done, touching the election hereinafter commanded to be held:

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of the County in which the election took place; (*s*) and the Sheriff shall have all the powers for causing the election to be

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Whereas (*as in the last precedent to the asterisk, omitting the part between brackets, and then proceed as follows:*) and we do further command that you, the said Municipal Corporation, and any returning officer or other person or persons, or such of you to whom the same shall of right belong, do, pursuant to and according to the statute in that behalf, cause an election to be as speedily held as shall be lawful, for the election of a person (*or* persons) in the place or stead of the said —— who has (*or* have) been removed as aforesaid; and that you, or such of you to whom the same doth of right belong, do administer to the person (*or* persons) who shall be so elected, the oath (*or* oaths) if any, in that behalf by law directed; and that you admit, or cause to be admitted, such person (*or* persons) so elected into the said office, and that you, the said Municipal Corporation, do show how this writ shall have been executed to our Court of Queen's Bench (*or* Common Pleas), at Toronto, on the —— day of ——.

Witness, &c.

(*s*) The following may be the form of writ in such case:

VICTORIA, &c.

To the Sheriff of the County (*or* United Counties) of ——, Greeting:

Whereas (*the same as in the first precedent of a mandamus* (p. 103), *to the end of the words "adjudged and determined," then say*) that the election (*or* elections) of all the members of the Municipal Corporation of ——, returned as elected at the election (*or* elections) of members of the said corporation held (*describing the time or times and place or places of such election* (*or* elections) was (*or* were) invalid or void in law, and that (*naming them all*) had usurped (*proceeding as in the first precedent, adopting the plural form, to the asterisk, and then as follows:*) and we do hereby further command you, the said sheriff, that you do, pursuant to the statute in that behalf, admit and return and swear into, or cause the said (*naming the person adjudged to have been duly elected*) to be forthwith admitted or returned, and sworn into the said office, to use, exercise, and enjoy the same, and that you do and perform, or cause to be done and performed, all and every act or acts, thing or things necessary to be done and performed in the premises: and we hereby command and strictly enjoin all and every person or persons to whom the same shall lawfully belong, to be aiding and assisting you, and to do all and every lawful and necessary act to be done by him or them in the premises, according to the purport, true intent and meaning of these presents, and of the statutes in that behalf; and how you shall have executed this writ make known to our Court of Queen's Bench or Common Pleas, at Toronto, on the —— day of —— next, and have then there this writ.

Witness, &c.

A writ requiring a new election may be in the following form:

VICTORIA, &c.

To the sheriff, &c. (*as in the first precedent* (p. 103) *to the asterisk, omitting the part between the brackets, and adopting the plural form, then concluding as follows:*) and that you do every act necessary to be done by you in order to the due election and admission of members of

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held which a Municipal Council has in order to supply vacancies therein; (*a*)

Defendant may disclaim

How to proceed.

12. Any person whose election is complained of may, within one week after service on him of the writ, (*b*) transmit post paid, through the Post Office, directed "To the Clerk of the Judges' Chambers, at Osgoode Hall, Toronto," or to "The Judge of the County Court," of the County of —— (*as the case may be*) or may cause to be delivered to such Clerk or Judge, a disclaimer signed by him, to the effect following: (*c*)

Form of disclaimer, &c.

"I, A. B., upon whom a writ of summons, in the nature of "a *Quo Warranto*, has been served for the purpose of con- "testing my right to the office of Township Councillor, (*or as* "*the case may be*,) for the Township of ——, in the County "of ——, (*or as the case may be*,) do hereby disclaim the "said office, and all defence of any right I may have to the "same.

"Dated the —— day of ——,

(Signed,) "A. B."

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the said corporation, in the place and stead of the persons whose elections have been so declared invalid; and we hereby command, and strictly enjoin all and every person and persons (*continuing as in the last precedent to the end.*)

Witness, &c.

(*a*) Sections 94 & 125 of this act, taken together, show that the Sheriff is to appoint a Returning Officer when an old Council has been superseded by a new one. Where the members of the new Council have been ejected there can be no longer any councillors in possession of the office. The object therefore of this clause is to enable the Sheriff to take the steps necessary to the election or admission of new members with a view to the re-organization of the Council.

(*b*) The writ is to be generally made returnable on the eighth day after service, computed exclusively of the day of service (sub-sec. 5, of sec. 131); and the design of this clause is, that the disclaimer, if any, should be filed before the writ is returned.

(*c*) When the writ has been issued by direction of a Judge of one of the Superior Courts and is returnable before a Judge of any such Court, the disclaimer should be addressed, "To the Clerk of Judge's Chambers, at Osgoode Hall, Toronto," or if returnable before the Judge of the County Court, then to "The Judge of the County Court of the County of, &c." In either case, the disclaimer so addressed may, if preferred, be mailed or else be delivered to the proper Judge or Clerk. If mailed, the envelope must on the outside be endorsed with the word "Disclaimer." The letter must also be registered in the office where mailed. (Sub-sec. 13.)

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Posting and Registry of disclaimer.

13. Such disclaimer, or the envelope containing the same, shall moreover be endorsed on the outside thereof, with the word "Disclaimer" and be registered at the Post Office where mailed; (*d*)

Duplicate disclaimer to be delivered to Clerk.

14. Every person so disclaiming shall deliver a duplicate of his Disclaimer to the Clerk of the Council, and the Clerk shall forthwith communicate the same to the Council; (*e*)

Costs provided for.

15. No costs shall be awarded against any person disclaiming as aforesaid, unless the Judge is satisfied that such party consented to his nomination as a candidate or accepted the office, in which cases the costs shall be in the discretion of the Judge; (*f*)

(*d*) Two things are here made requisite:

1. That the disclaimer or envelope containing the same be endorsed on the outside thereof with the word "disclaimer."
2. That it be registered at the post-office where mailed.

(*e*) This is to apprise the Council that the party no longer claims a seat therein. It is made the duty of the Clerk "forthwith" to communicate, &c., as to which see note *l* to sec. 125.

(*f*) The rule is, that the costs of a contested election are in the discretion of the Judge. (Sub-sec. 16.) The exception is, where a regular disclaimer is made within the time limited for the purpose, in which case no costs are to be awarded against the party who disclaims. If, however, the Judge be satisfied that the party "consented to his nomination as a candidate, or accepted the office," the case comes within the rule, and not the exception. Where defendant before this Act personally contested the election, but on its being moved against sent in a disclaimer praying to be relieved from costs, because, having been duly elected, he was obliged, under a penalty, to accept office, the learned Judge in Chambers refused to relieve him of costs. (*The Queen ex rel. Featherstone* v. *McMonies*, 2 U. C. Cham. R. 137.) If the disclaimer be filed too late, clearly costs are in the discretion of the Judge. (*The Queen ex rel. Hawke* v. *Hull*, *Ib.* 182.) On the 4th March the relator obtained a summons to contest defendant's election, and the writ and statement were served on that day. On the 9th, defendant sent a written disclaimer to the Judge in Chambers, which was received on the 10th, and on the 13th the relator's affidavit was filed stating that defendant had consented to his own nomination, and had taken his seat, &c. No proof of the grounds taken in the statement were ever filed, and the case was then allowed to drop. On the 27th April the relator filed a further affidavit stating that after the disclaimer the Reeve had ordered a new election, at which he, the relator, was duly elected, but that the defendant persisted in retaining his seat, contending that it had not become vacant by his disclaimer. Sir J. B. Robinson, under these circumstances, refused to give judgment, as if the matter were still pending on the summons, there being no proof of any of the objections taken, but held that the disclaimer could not nullify the election, as the parties seemed to have supposed; and that if

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16. In all cases, not otherwise provided for, costs shall be in the discretion of the Judge; (*g*) When discretionary.

17. Where there has been a contested Election, the person elected may at any time after the election, and before his election is complained of, deliver to the clerk of the Municipality a disclaimer signed by him as follows; (*h*) Person elected may disclaim at any time before his

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the Council should support the relator in his seat, the defendant or some one else must move against his election on the ground that it was illegally ordered. (*The Queen ex rel. Freeman* v. *Jones*, 1 U. C. Prac. R. 306.) The Judge, who was in Chambers at the return of the summons, might perhaps enter an adjournment to a certain day, and call for proofs as to the first election, and give judgment. (*Ib.*)

(*g*) The Judge has a discretion to withhold costs altogether from either side, if he see fit (*The Queen ex rel. Swan* v. *Rowat*, 13 U. C. Q. B. 340), or to distribute the costs, that is, to order each party to pay his own costs. (*The Queen ex rel. Gordanier* v. *Perry*; Chambers; Hagarty, J.; 3 U. C. L. J. 90.) Where it was sworn that intending voters for an unsuccessful candidate were obstructed in the approach to the polling place by a crowd under the control of one of the successful candidates, and neither the fact of the obstruction nor the control was unequivocally denied by that candidate, the election as to him was set aside with costs. (*The Queen ex rel. Gibbs* v. *Branighan*, 3 U. C. L. J. 127.) The tendency of modern decisions is not to make a party pay costs unless it be shown that he himself participated in the improper conduct for which the election is set aside. (*The Queen ex rel. Davis* v. *Wilson et al.*, 3 U. C. L. J. 165.) But relators are not to be discouraged from bringing cases of invalid elections under notice of a Judge at the peril of having to lose the costs necessarily incurred. (*The Queen ex rel. Rollo* v. *Beard*, 1 U. C. L. J., N. S., 126; see also *The Queen ex rel. Charles* v. *Lewis*, 2 U. C. Cham. R. 177; *The Queen ex rel. Hawke* v. *Hall*, 2 U. C. Cham. R. 187; *The Queen ex rel. Dillon* v. *McNeil*, 5 U. C. C. P. 137.) In one case a learned Judge refused to make a relator pay costs, though unsuccessful, where it was shown he had acted in good faith in bringing forward his complaint. (*The Queen ex rel. Crozier* v. *Taylor*, 6 U. C. L. J. 60.) So where a Returning Officer, made a party to the proceedings, was shown to have acted in good faith, though illegally, costs were not imposed on him. (*The Queen ex rel. Coupland* v. *Webster*, 6 U. C. L. J. 89.) Where the Returning Officer was acquitted of blame, and relator's statement was shown not to be strictly correct, the latter was ordered to pay costs to the former. (*The Queen ex rel. Hawke* v. *Hall*, 2 U. C. Cham. R. 182.) The Master, on taxing costs to the successful party, should consider whether or not the successful party produced an unnecessary number of affidavits, or affidavits unnecessarily diffuse, and act accordingly. (*The Queen ex rel. Walker* v. *Hall*, 6 U. C. L. J. 138.) A by-law to pay the costs of a contested election is illegal, and will be quashed with costs. (*In re Bell and the Municipality of the Township of Manvers*, 2 U. C. C. P. 507; S. C., 3 U. C. C. P. 400.) A municipality cannot legally support such a contest, or indemnify one of the parties to a contest of the kind. (*Ib.*) As to table of taxable costs, see Appendix.

(*h*) Disclaimers provided for by this section are of two kinds:

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election is complained of

"I, A. B., do hereby disclaim all right to the office of Township Councillor, (*or as the case may be*) for the township of —— (*or as the case may be*) and all defence of any right I have to the same."

Disclaimer to operate as resignation.

Such disclaimer shall operate as a resignation, and relieve the party making it from all liability, and the candidate having the next highest number of votes shall then become the Councillor, or as the case may be;

Judge to return his judgment to the Court in term; it shall be final.

18. The decision of the Judge shall be final, and he shall, immediately after his judgment, return the writ and judgment with all things had before him touching the same into the Court from which the writ issued, there to remain of record as a judgment of the said Court; (*i*) and he shall, as occasion requires, enforce such judgment by a writ in the nature of a writ of peremptory *Mandamus*, (*j*) and by writs of execution for the costs awarded; (*k*)

The Judges to make rules, &c.

19. The Judges of the Superior Courts of Common Law, or a majority of them, may, by rules made in term time, settle the forms of the writs of summons, *certiorari*, mandamus and execution, (*l*) and may regulate the practice respecting the suing

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1. Disclaimer under sub-section 12, which must be transmitted "within one week after service of the writ."
2. Disclaimer under the sub-section here annotated, which may be transmitted "at any time after the election," but "before the election is complained of."

In the case of the former there are no costs, unless the Judge is satisfied that the party disclaiming consented to his nomination as a candidate, or accepted the office.

In the case of the latter there can be no costs, as the disclaimer must be made before writ, and when made relieves the party "from all liability." The latter provision is a new one.

(*i*) Under the old act, leave was given to appeal from the decision of the Judge to the full Court. (*The Queen ex rel. McKeown* v. *Hogg*, 15 U. C. Q. B. 140.) That privilege was in the Municipal Institutions Act of 1858, when introduced to the Assembly, but was struck out in committee. The object, no doubt, is effectually to ensure the summary relief intended. The elections being annual, the delays caused by appeals are calculated to frustrate the objects of an application.

(*j*) See notes *x*, *y*, *z*, to this section.

(*k*) The power of a Judge to award costs for or against a relator, defendant or Returning Officer, is in general exercised only on the final determination of the case. (*The Queen ex rel. Arnott* v. *Marchant et al.*, 2 U. C. Cham. R. 167.

(*l*) The following may be the form of *fi. fa.* for costs:

VICTORIA, &c.

To the Sheriff of the County (*or* United Counties) of ——, Greeting:

We command you, that you levy, or cause to be levied, of the goods

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out, service and execution of such writs, and the punishment for disobeying the same or any other writ or order of the Court or Judge, and respecting the practice generally, in hearing and determining the validity of such elections or appointments, and respecting the costs thereon; and may from time to time rescind alter or add to such rules; but all existing rules shall remain in force until rescinded or altered as aforesaid; (*m*)

Appointments equivalent to elections.

132. The appointment of members of Municipal Councils, when required to be made under this Act shall be deemed elections within the preceding section, and in such cases the relator may be any member of the Council or any elector of the Municipality or Ward for which the appointment wasmade. (*n*)

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and chattels of A. B., late of ——, the sum of ——, which hath lately been adjudged to C. D., of ——, in our Court of Queen's Bench (*or* Common Pleas), at Toronto, according to the form of the statute in such cases made and provided, for his costs by him laid out and expended in his defence upon a certain writ of summons in the nature of a *quo warranto*, issued out of our said Court against the said C. D., upon the relation of the said A. B., for usurping the office of ——, in our —— of ——, in your County (*or* Counties) (*if the Returning Officer has been made a party, add here*, "to which proceeding E. F., the Returning Officer at the election of the said C. D. to the said office, was made a party"); whereof the said A. B. is convicted, as in our said Court appears of record; and that you have that money before our said Court, at Toronto, immediately after the execution hereof, to satisfy the said C. D. for his costs aforesaid, and have you then there this writ.

Witness, &c.

N. B.—When the Returning Officer has been made a party, and is entitled to costs, the fieri facias *must be framed accordingly.*

(*m*) The powers conferred are:

1. To *settle* the forms of the writs of summons, certiorari, mandamus and execution.
2. To *regulate* the practice respecting the suing out, service and execution of such writs, and the punishment for disobeying the same or any other writ or order of the Court or Judge, *and* respecting the practice generally in hearing and determining the validity of such elections or appointments, *and* respecting the costs thereon.
3. To rescind, alter or add to such rules.

But it is declared that all existing rules are to remain in force until rescinded or altered. The existing rules which have been in force since the Municipal Act of 1849 will, if not suspended before this work is completed, be found in the Appendix. They in several respects need change, in consequence of the altered state of the law since they were first promulgated. It was the intention of the late Mr. Justice Burns to have revised the rules, especially as to costs, giving increased counsel fees, and making an allowance for briefs, &c.; but his much lamented death prevented him carrying his intention into effect.

(*n*) The question arose in the case of *The Queen on the relation of Beaty* v. *O'Donoghue, et al.* 3. U. C. L. J., 75, whether appointments

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MEETINGS OF COUNCIL, &c.

First Meeting of Members Elect.

First meetings of Councils.

133. The members of every Municipal Council, (except County Councils,) and the trustees of every Police Village, shall hold their first meeting at noon, (*o*) on the third Monday of the same January in which they are elected, or on some day thereafter at noon; (*p*) and the members of every County Council shall hold their first meeting at noon, or some hour thereafter, on the fourth Tuesday of the same month, or on some day thereafter. (*q*)

Place, in Counties.

134. The members of every County Council shall hold their first meeting at the County Hall, if there is one, or otherwise at the County Court House. (*r*)

Election of Heads of Council, other than of Cities and Towns.

Elections of Heads of County Councils.

135. The members elect of every County Council, being at least a majority of the whole number of the Council when full, (*s*) shall at the first meeting after the yearly elections, and after making the declarations of office and qualification when required to be taken, organize themselves as a Council by electing one of themselves to be Warden, and such person shall be the head of the Council. (*t*)

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came within the clauses for the summary trial of contested elections, and it was held that they did not. This section supplies the defect which was then felt to exist in the law, and as regards the trial of contested elections, places appointments and elections on the same footing.

(*o*) A meeting at 6 o'clock, P.M., held a sufficient compliance with the Act. (*The Queen ex rel. Heenan* v. *Murray*, 1 U.C. L. J., N. S., 104.)

(*p*) So that it is not imperative to meet on the third Monday in January. (*The Queen ex rel. Hyde* v. *Barnhart*, 7 U. C. L. J. 126.)

(*q*) A County Council being composed of Reeves, it is essential that the Township, Town and Village Councils should be organized and Reeves be selected before the County Council can be constituted (sec. 135.) Hence the day appointed for the first meeting of a County Council is later in the month of January than that of any other Municipal body.

(*r*) The Court House is to a great extent under the control of the County Council. See sec. 401, *et seq.* The first meeting is to be held in the County Hall or County Court House (*as the case may be.*) Subsequent meetings may be held elsewhere. (Sec. 138.)

(*s*) See *The Queen ex rel. Evans* v. *Starrat*, 7 U. C. C. P. 487.

(*t*) The members being at least a majority of the whole when full, are required at their first meeting to organize themselves as a council by electing one of themselves to be Warden. They have no right to determine the right of any member of the Council to a seat. (*In re*

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136. At every election the Clerk of the Council shall preside, and if there is no Clerk, the members present shall select one of themselves to preside, and the person selected may vote as a member. (*u*) Who to preside at.

137. In case of an equality of votes on the election of the head of any County Council, or provisional County Council, then, of those present, the Reeve, or in his absence, the Deputy Reeve, of the municipality which has the largest number of names on its last revised assessment roll, as rate-payers, shall have a second and casting vote. (*u*) Who to have the casting vote in the event of equality of votes.

SUBSEQUENT MEETINGS.

138. The subsequent meetings of the County Council, and all the meetings of every other Council, shall be held at such place, either within or without the municipality, as the Council from time to time, by resolution on adjourning to be entered on the minutes, or by By-law, appoints. (*b*) Place of meeting of County Councils.

Hawk and Ballard, 3 U. C. C. P. 241; see also, *In re Township of Ashpodel and Sargant*, 17 U. C. Q. B. 593.) But that, under certain circumstances may, subject to appeal to the ordinary tribunals, be determined by the County Clerk. (See *The Queen ex rel. McManus* v. *Ferguson*, 2 U. C. L. J., N. S. 19.)

(*u*) The Clerk, if one, is to preside. If no Clerk, then a person is to be selected by the members present. The person so selected must be one of themselves. If the election be presided over by a person other than directed, the election itself may be held invalid. See note *e* to sec. 100.

(*a*) See *The Queen ex rel. Pollard* v. *Prosser*, 2 U. C. Prac. R. 330; and *The Queen ex rel. Hume* v. *Lutz*, 7 U. C. L. J. 103; and Statute 24 Vic. cap. 37.

(*b*) The object of this section would seem to be to enable a County Council to sit in a city or town that has been separated from the county, when the proper county buildings are situate therein and are owned by the county. (See secs. 134 & 139.) But the language ("every *other* Council") is broad enough to admit of any Municipal Council holding sittings elsewhere than within the municipality, which probably was not really intended. The meetings are to be held "at such place," &c., as the Council from time to time, by *resolution* on adjourning, to be entered on the minutes, or by *by-law*, appoints. The difference between a resolution and a by-law is fully explained in note *l* to sec. 190. It is apprehended that an established place of meeting would be by by-law, and that in the absence of any such by-law the place may be determined for the next meeting by resolution on adjourning, at which time there would be no opportunity of passing a by-law. In the absence of any by-law, &c., the next meeting would be understood as appointed to be held at the place of the last meeting. (Sec. 141.) Strictly speaking, there ought to be either a by-law fixing a permanent place, or a resolution from time to time entered at each adjournment. See *In re Pafford and The Corporation of the County of Lincoln*, 24 U. C. Q. B. 16.

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Place of may be in Cities.

139. The Council of the County in which any City lies (*c*) may hold its sittings, keep its public offices, and transact all the business of the Council and of its officers and servants within such City, and may purchase and hold such real property therein as may be convenient for such purposes. (*d*)

Meetings to be open.

140. Every Council shall hold its ordinary meetings openly, and no person shall be excluded except for improper conduct. (*e*)

Special may be closed; where held.

141. In case there is no By-law of a council fixing the place of meeting, any special meeting of the Council shall be held at the place where the then last meeting of the Council was held. (*f*) and a special meeting may be open or closed as in the opinion of the Council, expressed by Resolution in writing, the public interest requires. (*g*)

Quorum.

142. A majority of the whole number of members required by law to constitute the Council shall form a quorum. (*h*)

In Councils of five, three must concur.

143. When a Council consists of only five members, the concurrent votes of at least three shall be necessary to carry any resolution or other measure. (*i*)

(*c*) *Qu*, or "town separated from a county." See sec. 26.

(*d*) The power is not only to hold but to purchase real property in a City for County purposes, even after the separation of the City from the County.

(*e*) It is one of the essential qualities of a Court of Justice that its proceedings be public, and that all parties who may be desirous of hearing what is going on, if there be room in the place for that purpose, provided they do not interrupt the proceedings and provided there be no other kind of improper conduct, have a right to be present and hear what is going on, (per Bayley, J., in *Daubney* v. *Cooper*, 10 B. & C. 240.) This rule is to its fullest extent to be applied to ordinary meetings of every Municipal Council. But a special meeting may be open or closed as, in the opinion of the Council expressed by resolution in writing, the public interest requires. (Sec. 141.)

(*f*) The first meeting is required to be held at the County Hall, if there is one, otherwise at the County Court House. (Sec. 134.)

(*g*) The line drawn between an open and a closed meeting is here defined. The former is the rule (note *e* to sec. 140); the latter the exception, and only to be allowed when in the opinion of the Council the public interest requires it.

(*h*) The Court upon an application to quash a by-law, on the ground that a quorum of the Council was not present at its passing, refused to interfere. (*Sutherland* v. *The Municipal Council of the Township of East Nissouri*, 10 U. C. Q. B. 626.)

(*i*) This applies to municipalities having five members only (see sec. 66,) and the effect is, that although three constitutes a majority and

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144. Every Council may adjourn its meetings from time to time. (*j*) Adjournments.

145. The head of every Council (*k*) shall preside at the meetings of Council, (*l*) and may at any time summon a special meeting thereof; (*m*) and it shall be his duty to summon The heads to preside in Council.

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forms a quorum, a majority of that majority cannot decide any question before the Council. When three members only are present, they must be unanimous. When four or five are present, it requires three at least to make a majority.

(*j*) In the midst of a Parliamentary debate upon a question, any member may move "that this house do *now* adjourn," not by way of amendment to the original question, but as a distinct question which interrupts and supersedes that already under consideration. If this second question be resolved in the affirmative, the original question is superseded; the house must immediately adjourn and all business for that day is at an end. (May on the Law and Practice of Parliament, 21.) The motion for adjournment in order to supersede a question must be simply that the house do *now* adjourn. It is not allowable to move that the house do adjourn to any future time specified, nor to move an amendment to that effect to the question of adjournment. (*Ib.*) The house may also be suddenly adjourned by notice being taken that the necessary number of members to constitute a majority are not present; and an adjournment caused in that manner has the effect of superseding a question in the same way as a formal question to adjourn when put and carried. In either case the original question is so entirely superseded, that if it has not yet been proposed to the House by the Speaker, it is not even entered in the votes, as the House was not fully in possession of the question before adjournment. If a motion to adjourn be negatived, it may not be proposed again without some intermediate proceeding and in order to avoid any infringement of this rule, it is a common practice for those who desire to avoid a decision upon the original question on that day, to move alternately that "this House do now adjourn" and "that the debate be now adjourned." The latter motion, if carried, merely defers the decision of the House, while the former, as already explained, altogether supersedes the question. Yet members who only desire to enforce the continuance of the debate on another day, often vote for an adjournment of the House, which if carried, would supersede the question they are prepared to support. This distinction should always be borne in mind, lest a result should follow that is widely different from that anticipated. Suppose a question to be opposed by a majority and that the minority are anxious for an adjournment of the debate; but that on the failure of a question proposed by them to that effect they vote for an adjournment of the House; the majority have only to vote with them and carry the adjournment, when the obnoxious question is disposed of at once, and its supporters have themselves contributed to its defeat. (*Ib.*)

(*k*) *i. e.*, Warden, Mayor, or Reeve as the case may be. (See sec. 65.)

(*l*) *i. e.*, All meetings, ordinary or special.

(*m*) A special meeting may, under certain circumstances, be close and private. (See sec. 141.)

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a special meeting whenever requested in writing by a majority of the Council. (*n*)

When Reeve or Deputy Reeve to preside.

146. In case of the death or absence of the head of a Town Council, (*o*) the Reeve, and in case of the absence or death of both of them, the Deputy Reeve; (*p*) and in case of the death or absence of the head of a Village or Township Council, the Deputy Reeve, (*q*) shall preside at the meetings of Council, and may at any time summon a special meeting thereof; (*r*) but if there be more than one Deputy Reeve, the Council shall determine which of them shall preside at their meeting; (*s*) and in case of the death or removal of any member of a Municipal Corporation, an election shall take place as soon thereafter as possible, to fill such vacancy. (*t*)

Absence of head provided for.

147. In the absence of the head of the Council, and in the case of a Town, Village or Township, in the absence also of the Reeve, if there be one, and also of the Deputy Reeve or Deputy Reeves if there be one or more, by leave of the Council, or from illness, (*u*) the Council may, from among the members thereof eligible to be elected head, appoint a presiding officer, who, during such absence, shall have all the powers of the head of the Council. (*v*)

(*n*) A bare majority is all that is here meant or required, but it must be a majority of the whole number of the Council.

(*o*) *i. e.*, Of a town not separated from the county in which situate (see secs. 26 & 66); for in a town not so separated the Mayor is head, then the Reeve, and then the Deputy Reeve.

(*p*) *i. e.*, In the absence of both the head of the Council and the Reeve.

(*q*) In a township or village the Reeve is head, and then the Deputy Reeve.

(*r*) The latter part of this section belongs to the whole section, that is, any acting head authorised by the section may, among other things, at any time summon a special meeting of the Council.

(*s*) In certain towns and incorporated villages there may be several Deputy Reeves. (Sec. 66, sub-secs. 3, 4.) Hence the necessity for the provision here annotated as to the necessity in some cases of witnesses for the prosecution.

(*t*) See notes *y* and *z* to sec. 131, as to form of writs in such case.

(*u*) Provision is here made for the absence of all persons *ex officio* entitled to preside.

(*v*) The word "eligible," as used in the former act, applied to cities, in which aldermen were so eligible, but not councilmen. (Sec. 66.) Now that the office of councilman no longer exists, the use of the word is of no peculiar force, for all members of the council are eligible.

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148. If the person who ought to preside at any meeting does not attend within a reasonable time after the hour appointed, (*a*) the members present may appoint a Chairman from amongst themselves, and such Chairman shall have the same authority in presiding at the meeting as the absent person would have had if present. (*b*) Casual absence provided for.

149. The head of the Council, or the presiding officer or Chairman of any meeting of any Council, may vote with the other members on all questions, (*c*) and any question on which there is an equality of votes shall be deemed to be negatived. (*d*) Head to vote. *Presumitur pro negante*, in case of ties.

RESIGNATION OF HEADS OF COUNCIL.

150. The Warden of a County may resign his office (*e*) by verbal intimation to the Council while in session, or by letter to the County Clerk, if not in session, (*f*) in which case the Clerk shall notify all the members of the Council, and shall, if required by a majority of the members of the County Council, call a special meeting to fill such vacancy. (*g*) Vacancies Resignation of heads provided for. Vacancies, how filled.

(*a*) Provision is made in the preceding section for "death," or "absence," and here for non-attendance "within a reasonable time after the hour appointed."

(*b*) *Chairman;* that is, it is apprehended, a person eligible to be head or presiding officer of the Council. See secs. 147 & 150.

(*c*) The general import of the words used deserves attention. Apparently no question can come before the Council or meeting, on which the presiding officer or chairman is disentitled to vote. There is no exception of any kind in the enactment. The right to vote is given "on *all* questions." Its exercise on any particular question, perhaps affecting the conduct of the presiding officer or chairman himself, is a matter left entirely in his own discretion.

(*d*) This is in accordance with the well known Latin maxim, "*Omnia presumuntur pro negante.*"

(*e*) The right of a member of a Municipal Corporation to resign in the absence of express provision authorizing it, has been doubted. (*The King* v. *Tidderley*, Sid. 14, Com. Dig. tit. "Franchise," F. 30; *The King* v. *The Mayor of Ripon*, 1 Rayd. 563; *The Queen* v. *Lane*, 2 Rayd. 1304.) In 2 Roll. Ab. 456, it is said that an alderman, with the assent of the Corporation, may resign his office in the Corporation, and that the Corporation may accept the resignation as of right. The power of the head of a Corporation, under the section here annotated, to resign, is given with or without the assent of the Corporation. No ordinary member can resign without the assent of the majority of the members. (Sec. 151.)

(*f*) The mode deserves attention, viz., *by verbal intimation* to the Council while in session, *or by letter* to the County Clerk if not in session. This part of the section is new, and intended to remedy a defect pointed out by the Editor in the first edition of this Manual.

(*g*) The duties of the Clerk are two-fold:

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As amended by cap. 52.

caused by the resignation of a Reeve or a Deputy Reeve shall be filled by an ordinary election, as provided by section one hundred and twenty-five. (*h*)

OF COUNCILLORS.

Any member may resign.

151. Any Mayor or other member of a Council may, with the consent of the majority of the members thereof, to be entered on the minutes of the Council, resign his seat in the Council, (*i*) and the vacancy shall be supplied as in the case of a natural death. (*j*)

OFFICERS OF CORPORATIONS.

THE CLERK, AND DUTIES OF.

The Clerk and his duties.

152. Every Council shall appoint a Clerk; (*k*) and the Clerk shall truly record in a book, without note or comment, (*l*) all resolutions, decisions and other proceedings of the Council, and, if required by any member present, shall record the name

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1. To notify all the members of the Council of the resignation.
2. To call a special meeting to fill the vacancy, if required by a majority of the members of the Council.

The act being after the organization of the Council, the head, &c., of the Council would of course preside and take the votes. In the event of an equality of votes, there would, it is presumed, be in effect a negative, under sec. 149,

(*h*) Which see, and notes thereto.

(*i*) See note *e* to sec. 150.

(*j*) *i. e.*, by election. See sec. 125.

(*k*) It appears to be imperative on the Council to appoint a Clerk. Convenience, if not duty, however, will at all times render one necessary. The appointment would appear to be one till removed, and not merely for a year. (*The Corporation of the Township of Beverley* v. *Barlow*, 7 U. C. L. J. 117.)

(*l*) The Clerk being an executive officer of the Council, it is his duty to make all entries as directed. He is not at liberty, without the previous sanction of the Council, to exercise any discretion of his own. His record of proceedings is to be "without note or comment."

The duties of the Clerk, here enumerated, are the following:

1. To record all resolutions, decisions, and other proceedings of the Council.
2. To record the name and vote of every member voting, if required by any member present.
3. To keep the books, records and accounts of the Council.
4. To preserve and file all accounts acted upon by the Council.
5. To keep the original or certified copies of all by-laws, and of all minutes and proceedings of the Council.
6. All which he is to keep in his office, or in the place appointed by by-law of the Council.

Other duties are imposed by succeeding sections of this act.

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and vote of every member voting on any matter submitted; and shall keep the books, records and accounts of the Council; and shall preserve and file all accounts acted upon by the Council, and also the originals or certified copies of all By-laws, and of all minutes of the proceedings of the Council; all which he shall so keep in his office, or in the place appointed by By-law of the Council.

Minutes, &c., to be open to inspection.

Copies to be furnished, and charges therefor, &c.

153. Any person may inspect any of the particulars aforesaid at all seasonable times; and the Clerk shall, within a reasonable time, furnish copies thereof to any applicant at the rate of ten cents per hundred words, or at such lower rates as the Council appoints; (*m*) and shall, on payment of his fee therefor, furnish, within a reasonable time, to any elector of the municipality, or to any other person interested in any By-law, Order or Resolution, or to his attorney, a copy of such By-law, Order or Resolution, certified under his hand and under the Corporate Seal. (*n*)

Clerk to transmit a yearly return of rate-payers to the Receiver-General

154. The Clerk of every City, Town, Incorporated Village and Township, shall, on or before the first day of December, in each year, transmit to the Receiver-General a true return of the number of resident rate-payers appearing on the Revised Assessment Roll of his municipality for the year, (*o*) and shall accompany such return with an affidavit made before a Justice of the Peace verifying the same (*p*), in the following form:

Oath of verification.

"I, A. B., Clerk of the Municipality of the City, (Town, "Township *or* Village, *as the case may be*,) make oath and "say, that the above or the within written, or the annexed "return, contains a true statement of the number of resident "rate-payers appearing on the Assessment Roll of the said "City, (Town, Township *or* Village,) for the year one thou-"sand eight hundred and ——.

(Signed) "A. B.

"Sworn before me, &c." (*q*)

(*m*) Upon tender of the remuneration specified, it is made the duty of the Clerk to furnish the copies required, a duty which, it is conceived, might, in the event of refusal, be enforced by mandamus.

(*n*) See notes to sec. 198.

(*o*) This is required with a view to the appropriation of moneys arising from the clergy reserves. (Con. Stat. Can., cap. 25, sec. 7.)

(*p*) It is made the positive and distinct duty of the Clerk, on or before the day mentioned, not only to transmit the return, but to accompany it with the affidavit, of which a form is given. A penalty for neglect of duty is imposed by next section. (Sec. 155.)

(*q*) The affidavit must be made before a Justice of the Peace.

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Penalty for default.

155. And in case of default in any year so to transmit, the Clerk shall be liable to a penalty of twenty dollars, to be paid to the Receiver-General for the use of the Province, to be recovered by summary proceedings in the manner provided for the recovery of penalties for infringing By-laws under this Act. (*r*)

To make a yearly return to the County Clerk.

156. The Clerk of every Township, Village and Town shall, in each year, within one week after the first day of January, make a return to the Clerk of the County in which the municipality is situate, (*s*) of the following particulars respecting his municipality for the year then last past, namely :

What such Return shall shew.

Heads of columns in Assessment Rolls to be varied according to the form of the Assessment Rolls required by law.

1. Number of persons assessed.
2. Number of acres assessed.
3. Total of rentals of real property.
4. Total of yearly value other than rentals of real property.
5. Total actual value of real property.
6. Total of taxable incomes.
7. Total value of personal property.
8. Total yearly value of personal property.
9. Total amount of assessed value of real and personal property.
10. Total amount of taxes imposed by By-laws of the Municipality.
11. Total amount of taxes imposed by By-laws of the County Council.
12. Total amount of taxes imposed by By-laws of any Provisional County Council.
13. Total amount of Lunatic Asylum or other Provincial tax.
14. Total amount of all taxes as aforesaid.
15. Total amount of income collected or to be collected from assessed taxes for the use of the Municipality.
16. Total amount of income from licenses.
17. Total amount of income from public works.
18. Total amount of income from shares in incorporated Companies.
19. Total amount of income from all other sources.
20. Total amount of income from all sources.
21. Total expenditure on account of roads and bridges.
22. Total expenditure on account of other public works and property.

(*r*) See sec. 207, and notes thereto.

(*s*) Penalty for neglect. See sec. 159.

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23. Total expenditure on account of stock held in any incorporated Company.
24. Total expenditure on account of schools and education, exclusive of School Trustees' rates.
25. Total expenditure on account of the support of the poor, or charitable purposes.
26. Total expenditure on account of Debentures and interest thereon.
27. Total gross expenditure on account of Administration of Justice in all its branches.
28. Amount received from Government on account of Administration of Justice.
29. Total net expenditure on account of Administration of Justice.
30. Total expenditure on account of salaries, and the expenses of Municipal Government.
31. Total expenditure on all other accounts.
32. Total expenditure of all kinds.
33. Total amount of liabilities secured by Debentures.
34. Total amount of liabilities unsecured.
35. Total liabilities of all kinds.
36. Total value of real property belonging to Municipality.
37. Total number of sheep worried by dogs, and the amount paid therefor by the Municipality.
38. Total value of stock in incorporated Companies owned by Municipality.
39. Total amount of debts due to Municipality.
40. Total amount of arrears of taxes.
41. Balance in hands of Treasurer.
42. All other property owned by Municipality.
43. Total assets.

County Clerk to make a Return to the Provincial Secretary.

157. The Clerk of every County shall, before the first day of February, in each year, (*t*) prepare and transmit to the Provincial Secretary a Statement of the aforesaid particulars respecting all the Municipalities within his County, (*u*) entering each Municipality in a separate line, and the particulars required opposite to it, each in a separate column, together with the sum total of all the columns for the whole County, and shall also make at the same time a Return of the same

(*t*) Thus the Clerk of the Council, if the returns are duly made to him will have about three weeks to prepare *his* return.

(*u*) *i. e.* Of all townships, villages and towns, from which, under the preceding section he has received returns.

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particulars respecting his County, as a separate Municipality. (*v*)

And also Clerks of Cities.

158. The Clerk of every City shall, before the first day of February, in each year, (*a*) make a return to the Provincial Secretary of the same particulars respecting his City. (*b*)

Moneys to be retained if returns not made.

159. The Treasurer of the County shall retain in his hands any moneys payable to any Municipality, if it is certified to him by the Clerk of the County that the Clerk of such Municipality has not made the Return hereinbefore required; and the Receiver-General shall retain in his hands any moneys payable to any Municipality, if it is certified to him by the Provincial Secretary that the Clerk of such Municipality has not made the Returns hereinbefore required; (*c*) and any person so required to make any Return by a particular day who fails so to do, shall be liable to a penalty of not more than twenty dollars, to be paid to the Receiver-General for the use of the Province, to be recovered as last aforesaid. (*d*)

Provincial Secretary to lay the returns before Parliament.

160. The Provincial Secretary shall, as soon as may be after the commencement of every Session, lay before both Houses of the Legislature a copy of all Returns hereinbefore required to be made. (*e*)

CHAMBERLAIN AND TREASURER.

Chamberlain or Treasurer to be appointed.

161. Every City Council shall appoint a Chamberlain, (*f*) and every other Council shall appoint a Treasurer, (*g*) and

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(*v*) In addition to a return containing all the particulars furnished to him pursuant to sec. 156, it is to be specially noticed that he is required to make a return "of the same (similar) particulars respecting his County as a separate Municipality."

(*a*) A City being deemed for Municipal purposes a County, the Clerk of the City has the same time allowed him within which to make his return as the Clerk of the County. (Sec. 157.)

(*b*) Sec. 156.

(*c*) This and the next succeeding section (160) prescribe the duties of the officers therein mentioned. It is only necessary to discriminate between what is to be done by the Clerks of the different Municipalities, by the County Treasurers, and by the Provincial Secretary respectively.

(*d*) See sec. 155.

(*e*) See note *e* ante.

(*f*) See note *k* to sec. 152.

(*g*) The offices of Chamberlain and Treasurer, and member of the Council, are incompatible. (*The Queen* v. *Smith*, 4 U. C. Q. B. 322, and sec. 162.) If by any disregard of the law, accidental or otherwise, a

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every Chamberlain and Treasurer, before entering upon the duties of his office, shall give such security as the Council directs for the faithful performance of his duties, and especially for duly accounting for and paying over all moneys which may come into his hands; (*h*) provided that it shall be the duty of every Municipal Council in each and every year to enquire into the validity of the security given by such Chamberlain or Treasurer and report thereon. (*i*)

To give security.

Proviso.

162. Every Treasurer and Chamberlain respectively shall receive and safely keep all moneys belonging to the Corporation, and shall pay out the same to such persons and in such manner as the Laws of the Province and the lawful By-laws or resolutions of the Council direct; (*k*) but no member of the

To receive, and take care of, and disburse moneys, &c.

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person has been placed in the office who cannot by law hold it, things must take their course—the illegality must be ascertained and pronounced upon in a proper proceeding, instituted to try the question. (*Ib.*) A Treasurer of a Municipality should not be permitted also to act as a Bank agent. (*The Corporation of the Village of Ingersoll* v. *Chadwick*, 19 U. C. Q. B. 278.)

(*h*) The Chamberlain or Treasurer is, first, to give security; secondly, the security is to be given before he enters upon the duties of his office; and, thirdly, it is to be for the faithful performance of his duties, and especially for duly accounting for and paying over all moneys which may come into his hands.

It is no objection to the bond that it was executed before the appointment to office was made. (*The Corporation of the County of Essex* v. *Strong*, 8 U. C. L. J., 15; S. C., 21 U. C. Q. B. 149.)

(*i*) The imposition of additional taxes to those assessed at the time of taking the security and the increase of risk thereby, has been held not to violate a bond given for the general performance of duties and payment of moneys. (*The Corporation of the Township of Beverley* v. *Barlow et al.* 10 U. C. C. P. 178; S. C. 7 U. C. L. J. 117.) Nor is it a defence that the money received by the Treasurer was not demanded by the Government which was entitled thereto. (*Corporation of Essex* v. *Park*, 11 U. C. C. P. 473.)

The latter part of this section is a new and very necessary provision.

(*k*) In an action by a Municipal Corporation against their Treasurer on his bond, charging him with not having paid over moneys received, it appeared that the Corporation had a contract with one E. to build bridges for them; E. wanting money got the Reeve to indorse his note for $600, which was discounted by defendant at the Niagara District Bank, of which he was agent, as well as Treasurer of the Municipality. A few days afterwards another note for $400 made by E. and indorsed by other persons, one a member of the Corporation, was discounted at the same bank. When these notes were about to fall due, a meeting of the Council took place at which defendant was present, and the Reeve swore that it was then understood that the Council should assume these two notes, and he thought the defendant was

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Corporation shall receive any money from such Treasurer for any work performed or to be performed; (*l*) and such Chamberlain or Treasurer shall not be liable to any action at law for any moneys paid by him in accordance with any By-law or resolution passed by the Municipal Council of the Municipality of which he is the Chamberlain or Treasurer. (*m*)

His liability limited.

To make a return yearly to the Provincial Board of Audit.

163. The Treasurer or Chamberlain of every Municipality for which any sum of money has been raised on the credit of the Consolidated Municipal Loan Fund, (*n*) shall so long as any part of such sum, or of the interest thereon, remains unpaid by such Municipality, transmit to the Board of Audit, on or before the Fifteenth day of January in every year, a Return, certified on the oath of the Treasurer or Chamberlain before some Justice of the Peace, containing the amount of taxable property in the Municipality according to the then last Assessment Roll or Rolls,—a true Account of all the Debts and Liabilities of the Municipality for every purpose, for the then last year,—and such further information and particulars with regard to the liabilities and resources of the Municipality,

How attested and what it must show.

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authorized to charge them both to the Corporation; but other councillors examined did not agree with the Reeve in their recollection of what took place; and the only resolution or minute in writing was that the Council should give their note for $700 to be used in the Niagara District Bank by the defendant. This note was accordingly made by the Reeve and endorsed by the other members *Held*, that under these facts the Treasurer had no right to charge the Council with the remaining $300. (*The Corporation of the Village of Ingersoll* v. *Chadwick*, 19 U. C. Q. B. 278.) In an account rendered by defendant to the Council, this $1,000 was charged as paid to E. and it was asserted the Council made subsequent payments to him, assuming the account to be correct. But, *held*, that assuming this to be the case, of which there was some question, the Council by omitting to notice or object to this item were not bound to pay it. (*Ib.*)

(*l*) See note *h* to sec. 73.

(*m*) The first part of the section makes it the the duty of the Treasurer to pay out moneys in such manner as the laws of the Province and "the lawful by-laws or resolutions of the Council direct." But in order, it is presumed, to relieve the Treasurer from the responsibility of deciding what by-laws or resolutions are or are not legal, it is here decided that he shall not be liable to any action for "*any* moneys paid by him in accordance with *any* by-law or resolution passed by the Municipal Council of the Municipality of which he is Chamberlain or Treasurer." In other words, the by-law or resolution whether legal or illegal, if requiring him to pay the money, is a protection to him. This part of the section is new and intended to relieve Treasurers from the embarrassment indicated.

(*n*) See Con. Stat. Can. cap. 83.

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as the Governor in Council may from time to time require, (*o*) under a penalty, in case of neglect or refusal to transmit the Return, account, information or particulars, of one hundred dollars, to be recovered with costs as a debt due to the Crown, according to the thirty-first section of the Consolidated Statutes of Canada, chaptered sixteen, *An Act respecting the collection and management of the Revenue, the auditing of public accounts, and the liability of public Accountants*; (*p*) and it shall also be the duty of such Chamberlain or Treasurer to prepare and submit to the Municipal Council half yearly, a correct statement of the moneys at the credit of the Municipality whose officer he is; provided that in case of dismissal from office or absconding, it shall be lawful for the successor to such Chamberlain or Treasurer to draw any moneys belonging to such Municipality. (*q*)

Penalty for default.

Half-yearly statement for the Council.

Proviso.

ASSESSORS AND COLLECTORS OF CITIES, TOWNSHIPS, TOWNS, AND INCORPORATED VILLAGES.

164. The Council of every City, Town, Township and Incorporated Village shall, as soon as may be convenient after the annual election, appoint as many Asssessors and Collectors for the Municipality as the Assessment laws from time to time authorize or require, and shall fill up any vacancy that occurs in the said offices as soon as may be convenient after the same occurs; (*r*) but the Council shall not appoint as Assessor or

Assessors and Collectors, appointments and qualification of.

(*o*) It is, by Con. Stat. Can. cap. 83, sec. 64, made the duty of the Treasurer of any Municipality in *arrear* for any sum of money under that Act or the Municipal Loan Fund Act, to certify to the Provincial Secretary, within one month after the time when the sum of money is payable, the total value of the assessable property, and the rate in the dollar in such Municipality, for the year preceding the default.

(*p*) In any action for the recovery of such a penalty, it is sufficient to prove by any one witness or other evidence, that such return, &c., ought to have been transmitted by the defendant as alleged on the part of the Crown; and the onus of proving that the same was so transmitted is to rest upon the defendant. (Con. Stat. Can. cap. 16, sec. 31.)

(*q*) The latter part of this section is new.

(*r*) It was made a question, whether the Council, once having appointed an assessor, can cancel the appointment at their mere will and pleasure. (*In re McPherson and Beeman*, 17 U. C. Q. B. 99. But now, see sec. 177 of this Act.) The Council, by resolution, appointed B. assessor, who was sworn into office, and made the assessment. This appointment was made by a vote of three against two. The election of one of the three Councillors was afterwards set aside, and by a subsequent vote the resolution was rescinded, and a by-law passed appointing a different person assessor. Both made assessments, and

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Collector a member of the Council, (*s*) or a person who has not the same property qualification as that required for a Councillor or Alderman of the Municipality; (*t*) the same person may, in a City, Town or Township, be appointed Assessor or Collector for more than one ward or electoral division. (*u*)

Assessors to designate freeholders and householders in their assessment rolls.

165. The Assessors shall state in their assessment rolls whether the persons named therein are freeholders or householders, or both, (*a*) and shall, in separate columns for this purpose, use the initial letters F. and H. to signify the same respectively. (*b*)

Householder defined.

166. Every occupant of a separate portion of a house, such portion having a distinct communication with a public road or street by an outer door, shall be deemed a householder within this Act. (*c*)

Collector of Provisional Council.

167. The Collectors of the several Townships in a junior County of a union of Counties shall *ex officio* be Collectors in such Townships for the Provisional Council, and the Collectors shall pay over to the Provisional Treasurer the money they collect under any By-law of the Provisional Council. (*d*)

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in consequence much confusion arose. The Court, under these circumstances, granted a *quo warranto* to determine the validity of the last appointment. (*Ib*)

(*s*) A member of a Council to become eligible to be appointed assessor or collector would have to resign under sec. 150 or 151, before accepting the appointment.

(*t*) See sec. 70.

(*u*) See sec. 19.

(*a*) See notes to sec. 75.

(*b*) Great responsibilities rest upon assessors. Their work is not only the basis of municipal but of parliamentary elections. It is from the assessment roll, as revised and finally passed, that the list of parliamentary voters is made.

(*c*) A party is not the less a householder, or the less an occupant, because he lets a portion of his house to lodgers. The retention of any portion of the house as his own dwelling, gives him the legal occupation of the whole. The occupation of a lodger is considered in law that of the landlord. (See *Phillip's case*, Alcock's Registration cases, 20; *Dingenan's case*, 1b. 114; see also Saunders' Law and Practice of Municipal Registration, 1.) No lodger, though occupying the principal part of the house, is ever rated; but the owner, how small soever the part reserved to himself, is in the eye of the law the occupier of the whole. (*The King* v. *Eyles*, Cald. S. C. 414.) See further, note *q* to s. 75.

(*d*) The powers of a Provisional Council are not in any way intended to interfere with the powers of the Council of the Union. (Sec. 45.) Any money raised by the Provisional Council in the junior County is independent of any money raised therein by the Council of the Union (*Ib.*)

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168. The money so collected shall be deemed the money of the Union, so far as necessary to make the Collectors and their sureties responsible to the Union therefor; (*e*) and in case the Corporation of the Union receives the same, such Corporation shall immediately pay the amount to the Provincial Treasurer, retaining the expenses of collection. (*f*) Moneys, how to be disposed of.

AUDITORS.

169. Every Council shall, at the first meeting thereof, in every year, after being duly organized, appoint two Auditors, one of whom shall be such person as the head of the Council nominates; (*g*) but no one who, at such time, or during the preceding year, is or was a member, or is or was Clerk or Treasurer of the Council, (*h*) or who has, or during such preceding year had, directly or indirectly, alone or in conjunction with any other person, a share or interest in any contract or employment with or on behalf of the Corporation, (*i*) except as Auditor, shall be appointed an Auditor. (*j*) Auditors. Disqualification for office of.

170. The Auditor shall examine and report upon all accounts affecting the Corporation, or relating to any matter under its control or within its jurisdiction, for the year ending on the thirty-first day of December preceding the appointment. (*k*) Duties of.

(*e*) The Corporation of the Union is, as it were, a trustee of the money for the Corporation of the Provisional Council. But as between the former and its officers, it is no defence to the latter that the Corporation of the Union is not beneficially interested in the money.

(*f*) It would seem that a demand of some kind of the money ought to be made before commencing a suit for its recovery. (See *Trustees School Section No.* 3, *Caledon*, v. *The Corporation of the Township of Caledon*, 12 U. C. C. P. 301.)

(*g*) The Council is to appoint two Auditors annually, but one of them is to be a person nominated by the head of the Council. Hence it will be seen that a nomination by the head of the Council, though not in terms an appointment, is, under this section, in effect the same.

(*h*) All persons who have been members of the Council, or held office under the Council, are not disqualified, but only such as held office "during the preceding year;" that is, the year preceding the appointment. (See *The Queen* v. *Rivers*, 7 A. & E. 960.)

(*i*) As to being a contractor, or having an interest in a contract, see note to sec. 78.

(*j*) This is to enable the same individual to be reappointed to the office of Auditor. As to the declaration to be taken by an Auditor before entering on the duties of his office, see sec. 181.

(*k*) The Auditors, when appointed, have a duty to perform, and that duty is to examine *and* report upon all accounts affecting the Corporation, or relating to any matter under its control or within its jurisdiction, &c. Further duties are prescribed by the next following section (171),

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To prepare abstract and detailed statements of receipts and expenditures, &c.

171. The Auditors shall prepare an abstract of the receipts, expenditures and liabilities of the Corporation, and also a detailed statement of the said particulars, in such form as the Council directs, and report in duplicate on all the accounts audited by them, and make a special report of any expenditure made contrary to law, and shall file the same in the office of the Clerk of the Council within one month after their appointment; (*l*) and thereafter any inhabitant or rate-payer of the Municipality may inspect one of such duplicate reports, at all seasonable hours, and may, by himself or his agent, at his own expense, take a copy thereof or extracts therefrom. (*m*)

The Council to audit finally, &c.

172. The Council shall, upon the report of the Auditors, finally audit and allow the accounts of the Treasurer or Chamberlain and Collectors, and all accounts chargeable against the Corporation; (*n*) and in case of charges not regulated by law, the Council shall allow what is reasonable. (*o*)

Clerk to publish abstracts and statements.

173. The Clerk shall publish the Auditors' abstract and report (if any), and shall also publish the detailed statement, in such form as the Council directs. (*p*)

(*l*) The duties of Auditors, under this section, may be thus classed:
1. To prepare an abstract of the receipts, expenditures and liabilities of the Corporation.
2. To prepare a detailed statement of the said particulars, in such form as the Council may direct.
3. To report in duplicate on all accounts audited by them.
4. To file the reports in the office of the Clerk of the Council within one month after appointment.

(*m*) The right to inspect the Auditor's reports is extended to "any inhabitant or rate-payer." The difference between an inhabitant and a rate-payer is, that "inhabitant" means a resident, whether a rate-payer or not, and that a "rate-payer" is a person who pays taxes, whether a resident or not. (See *The King* v. *Inhabitants of North Curry*, 4 B. & C. 961.) Mere colorable residence is insufficient to constitute a person an inhabitant. (*The King* v. *Sargent*, 5 T. R. 466; *The King* v. *The Duke of Richmond*, 6 T. R. 560; *Bruce* v. *Bruce*, 2 B. & P. 229, *n*; *The King* v. *Mitchell*, 10 East. 511; *Whithorn* v. *Thomas*, 7 M. & G. 1.)

(*n*) It is the duty of the Auditors, within one month after appointment, to file their report. (Sec. 171.) It then becomes the duty of the Council to finally *audit* and *allow* the accounts of the Treasurer, &c., and all accounts chargeable against the Corporation. Some discretion is involved in this duty. It would even appear that the Council, in the performance of the duty, have power to overrule the Auditors. (Sec. 174.)

(*o*) That is, a *quantum meruit* or reasonable compensation for the services performed.

(*p*) The "abstract" is one thing, and the "detailed statement" another, each of which is described in sec. 171. The first is to be

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174. Every County Council shall have the regulation and auditing of all moneys to be paid out of funds in the hands of the County Treasurer. (*q*) Audit of moneys paid by Treasurer

175. The Council of every County may appoint two or more Valuators within the County, for the purpose of valuing the real and personal property, whose duty it shall be to ascertain the value of the same, as directed by the County Council; but such Valuators shall not exceed the powers possessed by Assessors under this Act; and the valuation so made may be made the basis of equalization by the County Council for a period not exceeding five years. (*r*) County Council may appoint valuators, their duties, &c.

SALARIES AND CONTINUANCE IN OFFICE.

176. In case the remuneration of any of the officers of the Municipality has not been settled by Act of the Legislature, the Council shall settle the same, and the Council shall provide for the payment of all municipal officers, whether the remuneration is settled by statute or by By-law of the Council. (*s*) Salaries of officers.

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printed and published by the Clerk, the second is to be published under the direction of the Council.

(*q*) The power of the County Council is to regulate *and* audit all moneys to be paid, &c. The word "regulate" appears to refer to an order prior to payment, as does the word "audit" refer to an act done after payment. The Council have, under sec. 172, a general power to finally audit and allow all the accounts of the Treasurer, &c., and all accounts chargeable against the Corporation.

(*r*) This section is new. Hitherto a County Council arrived at the value of lands situate in the several local municipalities of the County, merely by a process of equalization on an assumed or arbitrary valuation, with the object of producing a just relation between the different local municipalities without reducing the aggregate valuation of the whole County. This has been found unsatisfactory, and for remedy the section here annotated has been enacted. The appointment of County valuators is the main feature of the new remedy, and is left discretionary with the County Councils. The purpose of the appointment is "the valuing the real and personal property" in the County. The duty of the valuators, when appointed, is to ascertain the value, "as directed by the County Council," but on this stipulation, that they (the valuators) are not to "exceed the powers possessed by assessors under this act." When the valuation is made in any particular year, it may be made the basis of equalization by the County Council "for a period not exceeding five years."

(*s*) Under a power to remunerate all "township *officers*," it was held that Municipal Councillors had no authority to remunerate themselves. (*In re Wright and the Municipal Council of the Township of Cornwall*, 9 U. C. Q. B. 442; *Dantels* v. *The Municipal Council of the Township of Burford*, 10 U. C. Q. B. 478.) And it was made a question whether the Warden of a County is to be deemed an officer, so as to be entitled

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Of Chamberlain or Treasurer.

177. The Chamberlain or Treasurer may be paid a salary or percentage; (*t*) and all officers appointed by a Council shall hold office until removed by the Council, (*u*) and shall, in addition to the duties assigned to them in this Act, perform all other duties required of them by any other statute, or by the By-laws of the Council having jurisdiction over such officers. (*v*)

OFFICIAL DECLARATIONS.

Declaration of Qualification.

178. Every person elected or appointed under this Act (*a*) to any office requiring a qualification of property in the incumbent (*b*) shall, before he takes the declaration of office, or enters on his duties (*c*), make and subscribe a solemn declaration to the effect following: (*d*)

Form of

"I, A. B., do solemnly declare, that I am a natural born "(*or* naturalized) subject of Her Majesty; that I am truly "and *bonâ fide* seized or possessed to my own use or benefit, "of such an estate, (*specifying the nature of such estate, and if "land, designating the same by its local description, rents or*

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to remuneration as such. (*The Queen* v. *The District Council of the Township of Gore*, 5 U. C. Q. B. 357.) But now such questions are to a certain extent set at rest, for it is made lawful for the Council of every *Township* and *County* to pass by-laws for paying the members of the Council for their attendance in Council and mileage. (Sec. 271.) Where a Municipal Council, in 1850, passed a vote assigning to the Clerk of the Peace a fixed salary for that year, "in lieu of all fees," it was held (the Jury Act, 13 & 14 Vic. cap. 55, having been subsequently passed), that this could not debar him from claiming the fees allowed by that statute for preparing the jury books for the following year. (*Pringle* v. *McDonald*, 10 U. C. Q. B. 254.)

(*t*) The appointment of this officer is authorized by sec. 161.

(*u*) That is, during the pleasure of the Council. (See *In re MacPherson and Beeman*, 17 U. C. Q. B. 99.)

(*v*) Duties are in this act prescribed for such officers as Chamberlains, Treasurers, Collectors, Assessors and Auditors, but the Council are here empowered to impose additional duties on these and all other officers of the Council. (See *The Corporation of the Township of Beverley* v. *Park*, 11 U. C. C. P. 478.)

(*a*) As to the difference between an election and appointment, see note *s* to sec. 129.

(*b*) Assessors and Collectors for example (sec. 164.)

(*c*) The election of a Reeve by Township Councillors has been held "a duty," within the meaning of this section, rendering it incumbent on the Councillors, before proceeding to the election, to take the necessary declaration. (*In re Hawk and Ballard*, 3 U. C. C. P. 241.)

(*d*) Declarations are in many parts of this act substituted for oaths; but it must not be forgotten that the wilful making of any false statement required or authorized by this act, is a misdemeanor punishable as wilful and corrupt perjury. (Sec. 421.)

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"*otherwise*,) as doth qualify me to act, in the office of (*naming "the office*) for (*naming the place for which such person has "been elected or appointed*) according to the true intent and "meaning of the Municipal Laws of Upper Canada."

179. Every Returning Officer and Returning Officer's Clerk, every township, village and town councillor, every city Alderman, every Justice of the Peace for a town, and every clerk, assessor, collector, constable and other officer appointed by a council, shall also, before entering on the duties of his office, make and subscribe a solemn declaration to the effect following: (*e*) Declaration of office.

"I, A. B., do solemnly promise and declare, that I will "truly, faithfully and impartially, to the best of my knowledge "and ability, execute the office of (*inserting the name of "the office*) to which I have been elected (*or* appointed) in "this township (*or as the case may be*) and that I have not "received and will not receive any payment or reward, or "promise of such, for the exercise of any partiality or malver- "sation or other undue execution of the said office, (*g*) and "that I have not by myself or partner, either directly or in- "directly, any interest in any contract with or on behalf of "the said corporation. (*h*) Form of Declaration of office.

180. The solemn declaration to be made by every Mayor and Alderman, and by every Township, Village and Town Councillor, shall also state that he has not by himself or his partner an interest in any contract with or on behalf of the corporation. (*i*) Denial of disqualifying interest, who to take.

181. The solemn declaration (*j*) to be made (*k*) by every Auditor (*l*) shall be as follows: Auditor's declaration.

(*e*) See note *d* to sec. 178. The declaration made necessary by this section is to be taken in addition to the one required by sec. 178.

(*g*) This is a general declaration of office, and is intended to be administered, in addition to the officers specified, to *all* officers appointed by the Council.

(*h*) As to what is an interest in a contract with or on behalf of a Municipal Corporation, see note *h* to sec. 78.

(*i*) This is, as regards Aldermen, Township, Village and Town Councillors, a repetition of sec. 179.

(*j*) See note *d* to sec. 178.

(*k*) To be made before he enters on the duties of his office. (See sec. 178, *et seq.*)

(*l*) As to the appointment of Auditors and qualifications necessary, see sec. 169.

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Form of.

"I, A. B., having been appointed to the office of Auditor "for the Municipal Corporation of ————, do hereby "promise and declare that I will faithfully perform the duties "of such office according to the best of my judgment and "ability; and I do solemnly declare, that I had not directly "or indirectly any share or interest whatever in any contract "or employment (*except that of Auditor, if re-appointed*) "with, by or on behalf of such Municipal Corporation, during "the year preceding my appointment, and that I have not "any contract or employment (*except that of Auditor, if re-"appointed*) for the present year."

Heads and other members of the Council, before whom to declare.

182. The head and other members of the Council and the subordinate officers of every Municipality, shall make the declaration of office and qualification before some Court, Judge, Recorder, Police Magistrate or other Justice of the Peace having jurisdiction in the municipality for which such head members or officers have been elected or appointed, or before the Clerk of the Municipality. (*m*)

Certificate of declaration.

183. The Court, Judge or other persons before whom such declarations are made, shall give the necessary certificate of the same having been duly made and subscribed. (*n*)

Head of Council and Reeves may administer oaths, &c.

184. The head of any Council, any Alderman, Reeve or Deputy Reeve, any Justice of the Peace and the Clerk of a Municipality, may, within the Municipality, administer any oath, affirmation or declaration under this Act, relating to the business of the place in which he holds office, except where otherwise specially provided, and except where he is the party required to take the oath or affirmation, or make the declaration. (*o*)

Oath or

185. The deponent, affirmant, or declarant shall subscribe

(*m*) This section enables the Heads of Councils, &c., to make the necessary declarations without the restrictions as to Court or Judge which formerly existed. In some respects this section has been already commented upon. (See note *s* to sec. 117.)

(*n*) The certificate is to the effect that the declaration has been made and subscribed—two things essentially different, but each necessary to complete the taking of the declaration. (See *The Queen ex rel. McManus* v. *Ferguson*, 2 U. C. L. J., N. S., 19.)

(*o*) The authority of the officers named is not to administer all oaths, but only such as relate to the business of the place in which the person administering the oath holds office—with the exceptions mentioned.

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every such oath, affirmation or declaration, (*p*) and the person administering it shall duly certify and preserve the same, and within eight days deposit the same in the office of the Clerk of the Municipalty to the affairs of which it relates, (*q*) on pain of being deemed guilty of a misdemeanor. (*r*)

Declaration to be subscribed and kept.

186. Every qualified person duly elected or appointed to be a Mayor, Alderman, Reeve or Deputy Reeve, Councillor, Police Trustee, Assessor or Collector of or in any Municipality, (*s*) who refuses such office, (*t*) or does not make the declarations of office and qualification within twenty days after knowing of his election or appointment, (*u*) and every person authorized to administer any such declaration, who, upon reasonable demand, (*v*) refuses to administer the same, shall, on conviction thereof before two or more Justices of the Peace under and subject to the Consolidated Act of Canada respecting the duties of Justices of the Peace out of Sessions, in relation to summary convictions and orders, forfeit not more than eighty dollars nor less than eight dollars, at the discretion of such Justices, to the use of the Municipality, together with the cost of prosecution. (*w*)

Penalty for refusing to accept office or take the oaths, &c.

How enforced.

(*p*) A deponent is one who makes a lawful oath. An affirmant is one who by law is permitted to affirm when otherwise he would be required to make an oath. And a declarant is a person who, instead of making either oath or affirmation, makes a solemn declaration, which, if false, is visited with punishment as much as either an oath or affirmation. (See note *d* to sec. 178.)

(*q*) The duty of the person administering an oath, &c., of the kind authorised, is two-fold, *first*, to certify and preserve the same, and *secondly*, within eight days to deposit the same in the place mentioned.

(*r*) As to misdemeanors, see note *t* to sec. 55.

(*s*) This provision apparently applies only to a case in which the party is himself returned at the election, and not to a case in which, though he was in truth elected, another person was improperly returned. (See *The Queen* v. *Coaks*, 3 El. & B. 249.)

(*t*) This renders the acceptance of the offices mentioned obligatory, at the risk of the penalty which follows refusal. Besides, it would seem that the mere payment of the penalty is no excuse for non-acceptance of the office. (*The Queen ex rel. Blasdell* v. *Rochester*, 7 U. C. L. J. 101.) Nor does the neglect to accept office work a forfeiture of the office. (*The Queen ex rel. Forsyth* v. *Dolsen*, 7 U. C. L. J. 71.)

(*u*) The gist of this is the *scienter* or *knowledge* of the appointment. (See *The Queen* v. *Preece*, 5 Q. B. 94.)

(*v*) The demand is to be reasonable, that is, to be made in a rational manner, and at seasonable hours.

(*w*) To be enforced, it is presumed, by warrant, in the manner directed by the Con. Stat. Can. cap. 103. (See sec. 246, sub-secs. 6, 7, 8.)

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OFFENCES.

The Embezzlement of Books, Moneys, &c.

Embezzlements by municipal officers.

187. All books, papers, accounts, documents, moneys and valuable securities respectively, by any person or officer appointed or employed by or on behalf of any Council, kept or received by virtue of his office or employment, shall be the property of the Corporation; (*a*) and in case any such person or officer refuses or fails to deliver up or pay over the same respectively to the Corporation, or to any person authorized by the Council to demand them, he shall be deemed guilty of a fraudulent embezzlement thereof, (*b*) and may be prosecuted and punished in the same manner as a servant fraudulently embezzling any chattel, money or valuable security of his master; (*c*) but nothing herein shall affect any remedy of the Corporation or of any other person against the offender or his sureties, or any other party; nor shall the conviction of such offender be receivable in evidence in any suit, at law or in equity, against him. (*d*)

(*a*) So as to enable the Corporation to maintain civil actions for or in respect of them, or to prosecute criminally when the offence of embezzlement is committed.

(*b*) This is a most important provision. It is in the first place declared that all books, papers, accounts, documents, moneys, and valuable securities, by any person or officer appointed by or on behalf of the Council, &c., kept or received, are the property of the Corporation. In the next place it is declared that if any *such* person refuse or fail to deliver up or pay over *the same*, he *shall* be guilty of a *fraudulent embezzlement thereof*, &c. Refusal or failure apparently constitutes the offence, regardless of intention. Embezzlement is a statutable stealing, and is an offence of a serious nature.

(*c*) For the punishment of embezzlements committed by clerks and servants, it is enacted, that if any clerk or servant, &c., shall, by virtue of his employment, receive or take into his possession any chattel, money or valuable security, for or in the name of or on account of his master, and shall fraudulently embezzle the same or any part thereof, every such offender shall be deemed to have feloniously taken the same from his master, although such chattel, money or security was not received into the possession of such master otherwise than by the actual possession of the clerk, servant or other person so employed. (Con. Stat. Can. cap. 92, sec. 42; *Ib.* cap. 99, secs. 58, 59; and the leading case of *The Queen* v. *Cummings*, in Appeal, 4 U. C. L. J. 182.) The punishment is imprisonment in the Provincial Penitentiary at hard labour for any term not exceeding fourteen nor less than seven years, or imprisonment in any other prison or place of confinement for any term not exceeding two years. (Con. Stat. Can. cap. 92, sec. 41.)

(*d*) The civil remedy is to be distinct from, and independent of, the criminal procedure for punishment of the offender.

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STEALING WRITS OF ELECTIONS, POLL BOOKS, &c.

188. If any person steals, or unlawfully or maliciously, either by violence or stealth, takes from any Deputy Returning Officer or Poll Clerk, or from any other person having the lawful custody thereof, or from its lawful place of deposit for the time being, or unlawfully or maliciously destroys, injures or obliterates, or causes to be wilfully or maliciously destroyed, injured or obliterated, or makes or causes to be made any erasure, addition of names or interlineation of names, into or upon, or aids, counsels or assists in so stealing, taking, destroying, injuring or obliterating, or in making any erasure, addition of names or interlineation of names into or upon any Writ of Election, or any Return to a Writ of Election, or any Indenture, Poll Book, Certificate or Affidavit, or any other document or paper made, prepared or drawn out according to or for the purpose of meeting the requirements of the law in regard to Municipal Elections; (*e*) every such offender shall be guilty of felony, (*f*) and shall be liable to be imprisoned in the Provincial Penitentiary for any term not exceeding seven nor less than two years, or to be imprisoned in any other place of confinement for any term less than two years, (*g*)

Stealing or destroying, &c., certain documents relating to Municipal Elections to be felony.

Punishment.

(*e*) If any person—

1. Steals.
2. Unlawfully or maliciously, either by violence or stealth, takes from any Deputy Returning Officer, or poll clerk, or from any other person having the lawful custody thereof, or from its lawful place of deposit for the time being;
3. Unlawfully or maliciously destroys, injures or obliterates, or causes to be wilfully or maliciously destroyed, injured or obliterated;
4. Makes or causes to be made any erasure, addition of names, or interlineation of names, into or upon;
5. Aids, counsels or assists in so stealing, taking, destroying, injuring or obliterating, or in making any erasure, addition of names, or interlineation of names, into or upon;

Any writ of election, or any return to a writ of election, or any indenture, poll-book, certificate or affidavit, or any other document or paper, made, prepared or drawn out, according to or for the purpose of meeting the requirements of the law in regard to municipal elections, shall be guilty, &c.

The words, "any other document," &c., do not include the assessment roll, which is the foundation of the poll-book and several of the other documents mentioned. (*The Queen* v. *Preston*, 21 U. C. Q. B. 86.) So that it has been held that an indictment will not lie for forging or altering the assessment roll for a township deposited with the Township Clerk. (*Ib.*)

(*f*) See note *b* to sec. 98.

(*g*) Two years common gaol would be illegal. (See *The Queen* v.

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or to suffer such other punishment by fine or imprisonment, or both, as the Court shall award; (*h*) and it shall not in any indictment for any such offence be necessary to allege that the article in respect of which the offence has been committed, was or is the property of any person, or that the same was or is of any value. (*i*)

Value of document need not be stated.

PROVISIONS APPLICABLE TO ALL COUNCILS.

Certain sections to apply to all Municipalities.

189. The following sections numbered from one hundred and ninety to two hundred and forty-four, both inclusive, relate to all Municipalities, namely:

1. Townships,
2. Counties,
3. Provisional Corporations,
4. Cities,
5. Towns, and
6. Incorpor. Villages. (*j*)

JURISDICTION OF COUNCILS.

Local jurisdiction of Councils.

190. The Jurisdiction of every Council shall be confined to the Municipality the Council represents, except where authority beyond the same is expressly given, (*k*) and the

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Powell, 21 U. C. Q. B. 215; *The Queen* v. *Travers and Green*, C. P. T. T. 1866, *M. S.*)

(*h*) There may be either fine *or* imprisonment, or fine *and* imprisonment, as the Court may award.

(*i*) It is apprehended that the species of property must be proved as laid. Thus, if the stealing alleged were of a writ of election, it would not be sufficient to prove the stealing of the poll-book merely. But if several articles, such as writ of election, poll-book, and indenture, it will be sufficient to prove the stealing of any one of them. So if not a stealing but an obliteration or alteration be alleged. (See Arch. Crl. Pl. 272, 15 Ed.)

(*j*) Police villages are neither enumerated here nor intended to be included under the operation of the sections from sec. 186 to sec. 240 inclusive. A police village is not a municipality, within the meaning of this Act. (Sec. 422, sub-sec. 1.)

(*k*) A Municipality, whether a County, City, Township, or Village, is a locality; and a Municipal Council is the governing body of that locality. Beyond the limits of the locality the Council has not in general any authority whatever. For this reason the section begins by declaring that "the jurisdiction (or authority) of every Council shall be confined to the Municipality (or locality) the Council represents." Thus one Township Council has no power to impose any regulations on a township of which it is not the Council. So of every other local Municipality. The proposition is so reasonable and so self-evident that little more is required to be said about it. Nor can one Municipal Council, in general, benefit another Municipality at the expense of its own; for instance, build a school house in a township of which it is not the representative. This too is an unmistakable proposition, but as between Townships and Counties not so clear as

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powers of the Council shall be exercised by By-law when not otherwise authorized or provided for. (*l*)

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the preceding. For many purposes a Township is within the jurisdiction of the Council of the County in which it is situate, and is subject to be taxed for county purposes by the County Council; but the right of a Township Council to tax itself in aid of the county, is limited. It would seem that a Township Council has no right voluntarily to pass a by-law imposing a rate in aid of a *county* rate. (*Fletcher* v. *The Municipality of the Township of Euphrasia*, 13 U. C. Q. B 129.) So the right of a Township Council to pass a by-law in aid of the cost of a school-house ordered by the County Council is doubtful. (*Kennedy* v. *The Municipal Council of Sandwich*, 9 U. C. Q. B. 326.) So a Township by-law was quashed as to so much of it as related to the raising of a sum of money to defray the demands of the County Council on the Township, as an equivalent to the Government school grant, &c., it not appearing on the face of the by-law that it was directed to the purpose of meeting a deficiency, nor even that there was any, if that would have authorized the by-law. (*Fletcher* v. *The Municipality of the Township of Euphrasia*, 13 U. C. Q. B. 129.)

(*l*) The jurisdiction of every Council is not only to be confined to the Municipality the Council represents, but is to be exercised, when not otherwise provided for, by *by-law*. When a corporation is duly erected, the law tacitly annexes to it the power of making by-laws or private statutes. This power is included in every act of incorporation; for, as is quaintly observed by Blackstone, "as natural reason is given to the natural body for governing it, so by-laws or statutes are a sort of political reason to govern the body politic." (1 Bl. Com. 476.) Though the power to make by-laws is unquestionably an incident of every Corporation, it is rarely left to implication; but is usually, as in the present case, conferred by the express terms of the Act of Parliament. And where the act enables the corporation to make by-laws in certain cases and for certain purposes, its power of legislation is limited to the cases and objects specified—all others being excluded by implication. (Angel & Ames on Corporations, § 325.) The legislation of a municipal body is at all events confined to the objects of its incorporation. (*Id.*) And a by-law has the same force within its limits and with respect to the persons upon whom it lawfully operates, as an Act of Parliament has upon people at large. (*Hopkins* v. *Mayor of Swansea*, 4 M. & W. 640.) The Courts upon general principles recognize judicially what Municipal Councils are competent to do, and hold that it is not necessary for them to recite in a by-law all that is requisite to show that they have proceeded regularly in passing it. (*Grierson* v. *The Municipal Council of Ontario*, 9 U. C. Q. B. 623; *Fisher* v. *The Municipal Council of Vaughan*, 10 U.C. Q. B. 492.)

Municipalities with the very best intentions are frequently plunged in difficulties by reason of defects in the by-laws they pass. Their powers are large, the matters in respect to which they are empowered to make by-laws, extensive and varied. The members of the corporations however competent in other matters, are not in general equal to the task of preparing complicated by-laws that require not only an acquaintance with the provisions of the statutes, but a familiarity with

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General power to make local regulations.

191. Every Council may make Regulations (*m*) not specifically provided for by this Act, and not contrary to law, for

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the general principles of law and the decisions of the Courts. It is no matter of surprise therefore that county as well as lesser municipalties occasionally transgress their powers, or omit some necessary matter of form, and the by-laws they pass turn out to be illegal and inoperative. (2 U. C. L. J. 133.)

It is a common belief that a municipal body can do by resolution whatever may be done by by-law. Nothing can be more erroneous or more tend to the insecurity of municipal government. (See *The Queen ex rel. Allemaing* v. *Zoeger*, 1 U. C. Prac. R. 219.) The general principle known to the common law is that a corporation of the kind can only act through its seal, and that its rules and regulations, whether general or special, should also be embodied in by-laws under seal. (Sec. 190.) But among people generally, and among that class composing Municipal Councils particularly, there is a dislike of formality, and in consequence the too frequent abandonment of by-laws for mere orders or resolutions. Now the proceedings of a Municipal Council that may be lawfully had by order or resolution, are comparatively few and unimportant. A by-law should not be dispensed with unless in a very clear case. In fact, whenever a Municipal Council is in doubt whether it can or cannot do a particular thing by order or resolution, it would be much safer and wiser, owing to the doubt, to use a by-law. Were this, as a rule, understood and followed, it would prevent much confusion in the administration of municipal affairs. Another common but erroneous belief is, that a Municipal Council can by order or resolution do that which, if done through a by-law, would be illegal. This it cannot do. No Municipal Council can do that informally which it has no power to do directly and formally. (*Daniels* v. *The Municipal Council of the Township of Burford*, 10 U. C. Q. B. 478.) A by-law, order or resolution, which revives an illegal by-law, is of course itself illegal. (*Canada Company* v. *The Municipal Council of the County of Oxford*, 9 U. C. Q. B. 567.) An order or resolution duly signed and sealed is virtually a by law; but many orders and resolutions pass by mere vote, without being thus authenticated. The municipal rules of proceeding generally require more formal steps to be taken in passing a by-law than in adopting an order or resolution. The power to make by-laws necessarily supposes the power to enforce them by pecuniary penalties, competent and proportionable to the offence. It is impossible to lay down any rule as to what is a reasonable penalty, for this must be determined by the nature of the offence. (Angell & Ames on Corporations, 361.) Fifty dollars would appear to be the general maximum (sec. 246, sub.sec. 6.) The penalty may be levied by distress, and, failing that, by imprisonment of the offender. (*Ib.* sub-secs. 7, 8.) In construing a by-law, &c., the court will look at the whole of it, to ascertain its meaning, and construe one part with another, or other parts, so as if possible to give full effect to the whole. (*In re Cameron and the Municipality of East Nissouri*, 13 U. C. Q. B. 190.)

(*m*) *Regulations.*—It is not stated in what manner these regulations are to be made, whether by-law, order or resolution. It is certainly not stated that they are to be made by order or resolution. And it is elsewhere provided that the powers of a Municipal Council, "when not

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governing the proceedings of the Council—the conduct of its members—and the appointing or calling of special meetings of the Council, and generally such other regulations as the good of the inhabitants of the Municipality requires, (*n*) and

To regulate meetings and proceedings;

otherwise authorized or provided for," shall be exercised by *by-law*. (Sec. 190.) Little doubt therefore exists in the mind of the editor, but that the regulations in this section mentioned must be in the form of by-laws. (See note *e* to sec. 190.)

(*n*) Every Municipal Council is under this section empowered to make regulations for the following purposes:

1. The governing of the proceedings of the Council.
2. For the conduct of its members.
3. For appointing special meetings of the Council.
4. For calling such meetings.
5. And generally such other regulations as the good of the inhabitants requires.

Provided there be no such regulations specifically given in this Act, and provided the regulations be not contrary to law.

It is a principle applicable to every regulation of a Municipal Corporation, first, that it be not contrary to the municipal acts or law authorizing the formation of the corporation, and, secondly, that it be not contrary to the general law of the land.

First—The regulations of a Municipal Council must not be inconsistent with the Municipal acts, for these acts create it an artificial being, impart to it its power, designate its object, and prescribe its mode of operation. They are in short the constitution of the Corporation. Hence all laws in contravention of them are void. The true test of all by-laws, says Mr. Justice Wilmot, "is the intention of the Crown in granting the charter and the apparent good of the corporation." (*The King* v. *Spencer*, 3 Burr. 1838.) So of a Municipal Council it may be said that the true test of a by-law is the intention of the Legislature in incorporating the Council, and the apparent good of the Municipality affected. Mr. Justices Yate, in the same case, said, "Corporations cannot make by-laws contrary to their constitution. If they do so, they act without authority." (*Ib.*; but see "The Case of Corporations," 4 Co. R. 77, 78.) As transcending the Municipal Acts, by-laws creating a new office, imposing an oath of office where none is required by the acts, giving a vote to a class of persons not entitled to vote by law, qualifying persons to be candidates not qualified by the acts, giving a casting vote to an officer not entitled to it by the acts, restricting or extending the right of admission or eligibility to office, altering the prescribed mode of election, or imposing new or additional tests or qualifications either on members or voters, would be void. (See Angell & Ames on Corporations, 345.)

Second.—The law of a country being as well a rule for the proceedings of corporations as for the conduct of individuals, all by-laws contrary to the common or statute law of the country are void. "All by-laws," says Hobart, "must ever be subject to the general law of the realm, and subordinate to it." (*Norris* v. *Staps*, Hob. 210.) For this reason, a by-law "impairing the obligation of contracts," or taking "private property for public uses without just compensation," would be void. (Angell & Ames on Corporations, 333. But where a statute authorized the corporation of a city to make by-laws "regulating," or if necessary "preventing," the interment of the dead within the city,

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To repeal or alter by-laws

may repeal, alter and amend its By-laws, save as by this Act restricted. (*o*)

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it was held that though that corporation had granted lands for the purpose of interment, and had covenanted that they should be quietly enjoyed for that purpose, yet that the corporation was not thereby estopped from passing a by-law forbidding such interment, under a penalty. (*Ib.*) This case was decided on the ground that the legislative power of the corporation over this subject was delegated to it *for the good of the city*, and that the by-law passed was to be regarded as if passed by the legislature; that no person is entitled to use his property so as to injure another, and that no covenant could give him power so to do, even though made with the corporation; since, as tending to control and embarrass the exercise of its important powers as a *local legislature*, the covenant, when it came in competition with them, must give way or was repealed. (*Ib.*) The legislative power of a corporation is not only restricted by the statute law, but by the general principles and policy of the common law. Indeed, whenever a by-law seeks to alter a well-settled and fundamental principle of the common law, or to establish a rule interfering with the rights or endangering the security of individuals or the public, a statute or other special authority emanating from the creating power must be shown to legalize it, either expressly or by implication. It is upon this principle that, though many by-laws passed by the ancient municipal corporations in England for the *regulation* of trade have been adjudged good, yet many were adjudged void as in *restraint* of trade and an oppression of the subject. (Angell & Ames on Corporations, 335.) In New York, where the trustees of a village corporation were empowered to make such prudential by-laws, rules and regulations as they from time to time should deem meet relative to "huckster shops in said village," provided they were not inconsistent with the laws of the State, or of the United States, it was held that a by-law passed by the trustees, that hucksters should take and pay for a license from the trustees, under a penalty, especially where it did not expressly appear that prudence required such a by-law, was in restraint of trade and void, as contrary to the general principles and policy of the State. (*Ib.* 335.) There are however numerous municipal ordinances and by-laws affecting the property of the subject, such as ordinances requiring the owners of lots fronting on certain streets to fix curb stones and make a brick way in front of their lots, or assessing the owners of buildings for similar purposes, affecting and regulating certain occupations and modes of using and exhibiting certain animals, such as by-laws prohibiting unlicensed persons from removing house dirt and offal from the city, prohibiting farmers from occupying stands for the purpose of selling in certain streets constituted by by-law a part of the city market, prohibiting the keeping of bowling alleys for gain, prohibiting the driving or riding of horses on a trot or gallop in the streets of a city, or the public exhibition of stud horses in a city, or requiring coal, &c., to be weighed, which in the United States are held reasonable and valid, as no more than a proper exercise of that general legislative power usually vested in municipalities, for the due police and government of their crowded thoroughfares. (*Ib.* 336; see also sec. 264 of this act and the act *passim*)

(*o*) It need hardly be mentioned that the same body as a municipal council, which has power to make has power to repeal by-laws; it

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BY-LAWS OF COUNCIL.

How Authenticated.

How by-laws to be authenticated.

192. Every By-law shall be under the Seal of Corporation, and shall be signed by the Head of the Corporation, or by the person presiding at the meeting at which the By-law has been passed, and by the Clerk of the Corporation. (*p*)

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being of the very nature of legislative powers that, by timely changes in the rule it prescribes, it should be enabled to meet the exigencies of the occasion. (Angell & Ames on Corporations, 329.) But the power does not extend to all by-laws. There are certain by-laws, such as those authorizing the issue of debentures, &c., upon the faith of which third persons act and change their circumstances, and from which the Municipality in general derives an immediate benefit—these being in the nature of securities, rather than ordinary regulations, cannot be repealed until the loan or debt arising thereout or dependent thereupon is satisfied. (Sec. 235.) Hence it is that in the section here annotated the power given is to repeal, alter or amend by-laws, is general, "save as is by this act restricted." When, however, a part only of a sum of money provided for by a by-law has been raised, the Council may, under certain restrictions, repeal the by-law as to any part of the residue. (Sec. 234.)

(*p*) The formalities prescribed in this section are indispensable. The by-law must be—

1. Under the seal of the Corporation.
2. Signed by the head of the Corporation.
   Or by the person who presided at the meeting at which the by-law passed.
3. Signed by the Clerk of the Corporation.

Unless the by-law be sealed, it is not a legal by-law. (*In re Croft and the Municipality of the Township of Brooke*, 17 U. C. Q. B. 269.) Where the head of the Corporation, either from caprice or obstinacy, refuses to do his duty in passing a by-law which is required for the benefit of his township or a part of it, it would seem that the remaining members of the Council would be justified in requiring another member of the Council to take the chair, and do that which the head of the Council perversely refuses to do. (*Preston and the Corporation of the Township of Manvers*, 21 U. C. Q. B. 626.) It is not, at all events, in the power of the head of the Council, by refusing to do his duty, to obstruct the regular proceedings of his colleagues in Council, and then move against their proceedings on account of their not bearing his name, which he has refused to attach to them. (*Ib.*)

No action can be sustained, as for a breach of duty, against the head of a Municipal Corporation for not applying the seal to make a contract between the Corporation and the plaintiff, founded upon a refusal, which, if there had been a previous contract, would have constituted a breach of it. There cannot be a remedy against the head of the Corporation equivalent to a remedy on the contract against the Corporation itself, had the contract been duly made, so as to make a valid contract where there is none. (*Fair* v. *Moore*, 3 U. C. C. P. 484.)

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Certified copies to be evidence.

193. A copy of any By-law, (*q*) written or printed, without erasure or interlineation, (*r*) and under the Seal of the Corporation, (*s*) and certified to be a true copy by the Clerk and by any member of the Council, (*t*) shall be deemed authentic, and be received in evidence in any Court of Justice without proof of the Seal or signatures, (*u*) unless it is specially pleaded or alleged that the Seal, or one or both of the signatures, have been forged. (*v*)

OPPOSITION TO, BY RATEPAYERS.

Opposition to by-laws applied for by rate-payers, provision for.

194. In case any person rated on the Assessment Roll of any Municipality, or of any locality therein, (*a*) objects to the passing of a By-law, the passing of which is to be preceded by the application of a certain number of the ratable inhabitants of such Municipality or place, (*b*) he shall, on petitioning the Council, be at liberty to attend, in person or by counsel or attorney, before the Council at the time at which the By-law is intended to be considered, or before a Committee of the Council appointed to hear evidence thereon, and may produce evidence that the necessary notice of the application for the By-law was not given, or that any of the signatures to the application are not genuine, or were obtained upon incorrect

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(*q*) *Not* "order or resolution."

(*r*) It is well to observe the requirement, that the copy, whether written or printed, is to be *without erasure or interlineation.*

(*s*) The seal of course must have been affixed by the proper authority, and the production of the copy, with an impression of it, is *primâ facie* evidence that it was affixed by the proper authority. (Angell & Ames on Corporations, 224.)

(*t*) The certificate of the copy being a true one is to be signed "by the Clerk *and* by any member of the Council."

(*u*) On a motion to quash a by-law, order or resolution, it is only necessary to produce a copy, certified under the hand of the Clerk alone, and under the corporate seal, together with an affidavit of the party applying, that the copy was received from the Clerk. (Sec. 198.) The latter section is framed for a special purpose, while the section here annotated is meant to provide for all general cases. (Per Draper, C. J., in *In re The Board of School Trustees and The Corporation of Sandwich*, 23 U. C. Q. B. 639.)

(*v*) It is for the party alleging the affirmative to give *primâ facie* proof of the forgery, before the other party can be required to rebut it and support the deed: the onus is on the party pleading forgery.

(*a*) Which any person may be on his own application. (Assessment Act, sec. 21, sub-sec. 2.)

(*b*) The right to object does not extend to the passing of *all* by-laws but only such as are "to be preceded by the application of a certain number of the ratable inhabitants of the municipality or place."

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statements, and that the proposed By-law is contrary to the wishes of the persons whose signatures were so obtained, and that the remaining signatures do not amount to the number nor represent the amount of property necessary to the passing of the By-law. (*c*)

When by-laws shall not pass.

195. If the Council is satisfied upon the evidence that the application for the By-law did not contain the names of a sufficient number of persons whose names were obtained without fraud and in good faith, and who represent the requisite amount of property, and are desirous of having the By-law passed, or if the Council is satisfied that the notice required by law was not duly given, the Council shall not pass the By-law. (*d*)

PROCEEDINGS WHEN THE ASSENT OF ELECTORS IS REQUIRED.

If a by-law requires the assent of the electors.

196. In case a By-law requires the assent of the electors of a Municipality before the final passing thereof, (*e*) the following proceedings shall be taken for ascertaining such assent, except in cases otherwise provided for: (*f*)

Time and place of voting shall be

1. The Council shall by the By-law (*g*) fix the day, hour and place for taking the votes of the electors thereon at every

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(*c*) The right to attend for the purpose mentioned exists only "on petitioning the Council." The person so attending may raise all or any of the following objections:

1. That the necessary notice of the application for the by-law was not given.
2. That any of the signatures to the application are not genuine.
3. That some of the signatures were obtained upon incorrect statements.
4. That the proposed by-law is contrary to the wishes of the persons whose signatures were so obtained.
5. *And* that the remaining signatures do not amount to the number, nor represent the amount of property necessary to the passing of the law.

(*d*) The Council is not to pass the by-law if satiafied of one of two things—*either* that the application for the by-law does not contain the names of a sufficient number of persons, &c., *or* that the notice required by law was not duly given.

(*e*) By-laws for creating debts, &c., are here especially intended. (See sec. 226, *et seq.*)

(*f*) If the proceedings prescribed be not taken, or be not duly taken, the by-law may be held invalid.

(*g*) It has been held sufficient if the manner of ascertaining the assent of the electors be prescribed by a notice attached to the proposed by-law when published, though the act says that it shall be determined by the by-law. (*Boulton and The Town Council of the Town of Peterborough*, 16 U. C. Q. B. 380.)

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fixed by by-law.

place in the Municipality at which the elections of the members of the Council or Councils therein are held, (*h*) and shall also name a Returning Officer to take the votes at every such place, and such day shall not be less than three nor more than four weeks after the first publication of the proposed By-law, as herein provided for; (*i*)

Proposed by-law to be published.

2. The Council shall, for at least one month before the final passing of the proposed By-law, publish a copy thereof in some newspaper published weekly or oftener in the Municipality, or if there is no such newspaper, in some newspaper in the nearest place in which a newspaper is published, and also put up a copy of the By-law at four or more of the most public places in the Municipality; (*j*)

(*h*) "*Are held*," that is, in each ward, when there are wards, &c.

(*i*) The by-law itself is, among other requirements,
1. To fix the time and place for taking the votes of the electors, &c.;
2. To name a Returning Officer to take the votes.

The time must not of course be inconvenient or unseasonable, and the place must be "every place at which the elections of the members of the Council, &c., are held." If the Returning Officer named fail to attend, it is apprehended that the electors may choose from among themselves a Returning Officer. (Sec. 97; sec. 196, sub-sec. 4.)

(*j*) The by-law is to be published in the manner directed, and to be so published "for at least one month," which means one calendar month. (Con. Stat. U. C., cap. 2, sec. 13.) The manner of publication is to be the insertion of a copy of the by-law in some newspaper published weekly or oftener in the municipality, *or*, if there is no such newspaper, in some newspaper in the nearest place in which a newspaper is published, *and* by putting up a copy of the by-law at four or more of the most public places in the municipality.

The municipality of Kingston proposed to take £7,500 in a road company, and published a by-law (No. 6) to authorize a loan, containing the usual recitals, imposing a rate, and directing the issue of debentures, &c. When the by-law came on for discussion, a clause was added reducing the sum to £5,000, and directing the rates to be altered accordingly, and, thus amended, it passed, in June, 1854. In December following, another by-law was passed (No. 8) providing for the issuing of debentures (authorized by No. 6), and directing a rate to be levied for the payment of the interest thereon, but making distinct provisions for meeting the principal out of the profits of the stock to be taken, and from other funds. This by-law did not repeal No. 6, but the enactments in it showed clearly that the rates imposed by that by-law were meant to be dispensed with. *Held*, that the last mentioned by-law was bad, for it was a new and independent by-law, and not a mere supplement to No. 6, and should therefore have been published before the passing, and have contained the usual recitals and enactments required in by-laws for creating a loan. *Held* also, that by-law No. 6 was bad, though not moved against, for it was not published beforehand in the form in which it ultimately passed. (*In re Bryant and the Municipality*

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3. Appended to each copy so published and posted, shall be a notice signed by the Clerk of the Council, stating that such copy is a true copy of a proposed By-law which will be taken into consideration by the Council after one month from the first publication in the newspaper, stating the date of the first publication, and naming the hour, day and place or places fixed for taking the votes of the electors; (*k*) Notice to be given.

4. At such day and hour a poll shall be taken, and all proceedings thereat and for the purpose thereof shall be conducted in the same manner, as nearly as may be, as at a Municipal election; (*l*) Poll.

5. Every Returning Officer shall, on the day after the closing of the poll, return his poll-book verified to the Clerk of the local Municipality in which the poll was taken, and in case of a By-law of a County Council, the Clerk of the local Municipality shall forthwith return to the Clerk of the County Council every poll-book so delivered to him; (*m*) Verified poll book to be returned.

6. The Clerk of the Council which proposed the By-law shall add up the number of votes for and against the same, and shall certify to the Council under his hand whether the majority have approved or disapproved of the By-law, (*n*) and Clerk to sum up and declare result.

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of Pittsburgh, 13 U. C. Q. B. 347; see also *Simpson* v. *The Corporation of the County of Lincoln*, 13 U. C. C. P. 48.) But the Court, in its discretion, has refused to quash a by-law under which a large sum of money had been borrowed, on the ground that the by-law was not published as often as necessary, and that the copy published in some respects differed from the by-law as ultimately passed. (*Boulton and the Town Council of the Town of Peterborough*, 16 U. C. Q. B. 380.)

(*k*) The publication of the notice is quite as necessary as that of the by-law itself. The notice may be in this form:

Take notice, that the above is a true copy of a proposed by-law, which will be taken into consideration by the Council of this municipality after one month from the first publication in the (*naming the newspaper*), the date of which first publication was (*stating the day of the week, month and year*), and that the votes of the electors of the said municipality will be taken thereon at (*naming the place or places*), on (*naming the day, &c.*), at (*naming the hour*).

C. D., *Clerk.*

(*l*) See sec. 101, *et seq.*

(*m*) *Verified*, &c. It is presumed, by a solemn declaration thereto annexed, that the poll book contains a true statement of the poll. (See sec. 102.)

(*n*) It is made the duty of the Clerk of the Council to add up the number of votes, &c., and to certify, &c., but no time is limited for the performance of the duty. It must, however, be done before the day appointed by the Council for taking the by-law into consideration.

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shall keep the same with the poll-book among the records of his office; (*o*)

What rate-payers only shall vote on by-laws for incurring a debt not payable in the current year.

7. The rate-payers entitled to vote on any By-law for incurring a debt or raising money, which shall not be payable within the then current year, shall be such rate-payers only as are rated on the assessment rolls for an estate of freehold, either legal or equitable, of sufficient value to entitle them to vote at any Municipal election, or of a leasehold the duration of which shall not be less than the period of time in which the debt to be contracted or the money raised under such By-law is made payable, and in the lease for which leasehold the lessee covenants to pay the municipal taxes, (*p*) and the Clerk shall furnish the Returning Officer with a verified list of those entitled to vote on such By-law; (*q*)

Oath, &c., required of rate-payer offering to vote.

8. Any rate-payer offering to vote on any such By-law as in the next preceding sub-section mentioned may be required by the Returning Officer or any rate-payer entitled to vote on any such By-law, to make the following oath or affirmation before his vote is recorded:

Form.

"I, A. B., do solemnly and sincerely make oath (*or* affirm, *as the case may be*) that I am the person named or purporting "to be named on the list of voters according to the terms "mentioned in sub-section number seven, of section one hun-"dred and ninety-six of the Act (*citing the title of this Act*) "to entitle me to vote on the By-law which is now submitted "to the rate-payers." (*r*)

(*o*) See sec. 152, *et seq.*, as to the duties of Clerks of Councils.

(*p*) This is a new provision. Its object is plain, viz., to declare what persons are entitled to vote as to their approval or disapproval of such by-laws as are mentioned in the section. All ratepayers are not so entitled; but only such "as are rated on the assessment roll for an estate legal or equitable of sufficient value to entitle them to vote at any Municipal Election, or of a leasehold, the duration of which shall not be less than the period of time in which the debt to be contracted or the money raised under such by-law is made payable, and in the lease for which leasehold the lessee covenants to pay Municipal taxes." The latter words as to leasehold interests, are peculiar. It is not intended that any lessee not fully interested in the lease shall vote. In the first place his lease must be in duration as long as the time for which the money is borrowed or debt created. In the next place it must appear that such lessee has covenanted by the lease to pay Municipal taxes.

(*q*) See sub-sec. 6 of sec. 100.

(*r*) This, which is new, is the only oath made necessary when voting on a by-law. It is simply an oath of the identity of the person ten-

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WHEN REQUIRING THE ASSENT OF THE GOVERNOR IN COUNCIL.

When the assent of the Governor is required to By-laws.

197. The facts required by this Act to be recited in any By-law which requires the approval of the Governor in Council, shall, before receiving such approval, be verified by solemn declaration, by the Head of the Council, and by the Chamberlain or Treasurer and Clerk thereof, and by such other persons and on such other evidence as to the Governor in Council satisfactorily proves the facts so recited; (*s*) or in case of the death or absence of any such Municipal Officer, upon the declaration of any other Member of the Council whose declaration the Governor in Council will accept. (*t*)

WHEN AND HOW QUASHED.

By-laws, how to proceed in

198. In case a resident of a Municipality, or any other person interested (*a*) in a By-law, order or resolution of the

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dering his vote with the person named on the voters list. There is apparently no power to go behind the list for the purpose of inquiring whether the name is rightfully or wrongfully on the list.

(*s*) This section applies only to by-laws requiring "the approval of the Governor in Council." To procure the approval, it is made necessary that—

1. The By-law be verified by solemn declaration.
2. The declaration be made by the Head of the Council,
   " " the Chamberlain or Treasurer,
   " " the Clerk of the Council.
3. *And* by such other *persons* and on such other *evidence* as to the Governor in Council satisfactorily proves the facts recited.

(*t*) Will *accept*, *i.e.*, may accept or deem satisfactory.

(*a*) The applicant in strictness should state that he is a resident of the Municipality in which the by-law was passed, or has an interest in the provisions of the by-law. (*In re Babcock and the Municipal Council of the Township of Bedford*, 8 U. C. C. P. 527; *In re Bogart and the Town Council of Belleville*, 6 U. C. C. P. 425.) Where applicant, who moved against a by-law of the United Counties of Peterborough and Victoria, swore that during all the year 1850, he had been, and was at the time of the separation a resident of and within the limits and boundaries of the Town of Peterborough, a Corporation within the said County of Peterborough, it was held that applicant was sufficiently described as a resident, so as to be entitled to make the application. (*In re Conger and Peterborough Municipal Council*, 8 U. C. Q. B. 349.) Where a freeholder of a Township, though not a resident, applied to quash a by-law; and it was objected, that being a non-resident he could not do so; it was held that as a freeholder of the township he had an *interest* in all the by-laws passed by the Township Council, sufficient to enable him to move to quash any of its by-laws. (*In re De la Haye and the Municipality of the Gore of Toronto*, 2 U. C. C. P. 317.) So it has been held that the owner of real estate in the Municipality which has been assessed, though not himself named on the assessment roll had a sufficient interest. (*In re*

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order to quash.

Council thereof, (*b*) applies to either of the Superior Courts of Common Law, (*c*) and produces to the Court a copy of the By-law, Order or Resolution, (*d*) certified under the hand of the Clerk and under the corporate seal, (*e*) and shews by

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Boulton and the Town Council of the Town of Peterborough, 16 U. C. Q. B. 380.) Where the affidavit stated deponent to be a rate-payer and a resident householder, it was held unnecessary to give any further description of him. (*Baker* v. *The Municipal Council of Paris*, 10 U. C. Q. B. 621.)

(*b*) Before the statute 12 Vic. cap. 81, sec. 165, the Courts of Upper Canada had not any power summarily to quash *by-laws* of a Municipality, (see *In re McGill and the Municipal Council of the County of Peterborough*, 9 U. C. Q. B. 562) and that power was not extended to *orders* and *resolutions* till 22 Vic. cap. 99, sec. 194. (See *In re Daniels and The Municipal Council of the Township of Burford*, 10 U. C. Q. B. 478; *In re Cæsar and the Municipality of the Township of Cartwright*, 12 U. C. Q. B. 341.)

(*c*) It has been held that the Practice Court is not authorized to entertain such an application. (*In re Sams and the City of Toronto*, 9 U. C. Q. B. 181.)

(*d*) Applicant must produce to the Court a copy of *the* by-law, order or resolution, that is of an *existing* by-law, &c. So that if before application the operation of the by-law be spent (*In re Terry and the Municipality of the Township of Haldimand*, 15 U. C. Q. B. 380) or expressly repealed (*In re McGill and the Municipal Council of the County of Peterborough*, 9 U. C. Q. B. 562) the rule will be discharged. (*Ib.*) But where the repeal is after application to quash the by-law, and so a tacit acknowledgement of the illegality of the by-law, the Municipality will be ordered to pay the costs of the application. (*In re Coyne and the Municipal Council of Dunwich*, 9 U. C. Q. B. 309; *In re Colman*, 9 U. C. C. P. 146.)

(*e*) Where the Seal of the Corporation, though not mentioned in the Clerk's certificate, was on the same page with the certificate, immediately above it and opposite to the signature of the Clerk, the old law was held to be sufficiently complied with. (*Baker* v. *The Municipal Council of Paris*, 10 U. C. Q. B. 621.) The Court will discharge a rule to quash a by-law, &c., moved on a copy of the by-law, &c., verified in a manner different from that prescribed by this statute, unless the reason for the variance is clearly and satisfactorily explained. (*Buchart* v. *The Municipality of the United Townships of Brant and Carrick*, 6 U. C. C. P. 130.)

Where the by-law was one passed by the Corporation of two United Townships, and after dissolution of the union, applicant produced a copy of the by-law certified under the hand of the clerk of the senior township and under the corporate seal of that township, the statute was held to have been sufficiently complied with and the by-law quashed. (*In re Scott and the Corporation of the Township of Harvey*, Q. B. T. T. 1866.) Where the copy of the by-law put in, not being certified as the act directs, could not be read, but the same was set out at length in affidavits filed, the deponent swearing that a by-law was passed by the Town Council in words following (setting out the

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affidavit, (*f*) that the same was received from the Clerk, (*g*) and that the applicant is resident or interested as aforesaid, (*h*) the Court, after at least four days' service (*i*) on the Corporation of a rule to shew cause in this behalf, (*j*) may quash the By-law, Order or Resolution in whole or in part for ille-

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by-law) the materials before the Court were held sufficient. (*In re The Board of School Trustees of the Town of Sandwich and the Corporation of Sandwich*, 23 U. C. Q. B. 639.) It will be observed that the statute is silent as to the right of the Clerk to charge fees for the certified copy or seal, while the statute 12 Vic. cap. 81, sec. 155, made it the duty of the Clerk only to give the copy "upon payment of his fee therefor." (See *In re Township Clerk of Euphrasia*, 13 U.C.Q.B. 622.)

(*f*) The affidavit ought to be intitled of the Court in which the motion is made (*Fraser* v. *The Municipal Council of the United Counties of Stormont, Dundas and Glengarry*, 10 U. C. Q. B. 286); but if it appears from the jurat to have been sworn before a Commissioner of that Court, the objection will not avail. (*Ib.*) If, however, the Commissioner merely describes himself as "a Commissioner, &c.," without stating of what Court, the affidavit must be intitled. (*In re Hirons et al. and the Municipal Council of Amherstburgh*, 11 U. C. Q. B. 458.) It need not be intitled "The Queen v. The Municipal Council of, &c." but may be "In the matter of W. S. C. and the Municipal Council of, &c." (*In re Conger and Peterborough Municipal Council*, 8 U.C.Q.B. 349.) Affidavits in answer must, it is apprehended, be intitled in the same way as the rule is, which they are produced to oppose. (See Tapping on Mandamus, 413.)

(*g*) It does not appear to be necessary that the copy produced should be sworn to have been received by the deponent himself from the Clerk. Where the deponent swore that the copy produced was received by one T. from the Clerk of the Council, and by T. was delivered to deponent, the affidavit was held sufficient. (*Fisher* v. *The Municipal Council of Vaughan*, 10 U. C. Q. B. 492.) The statute does not require that the affidavit should refer to the copy of the by-law, as being annexed, or that it should be in fact annexed, but only that the copy produced is the copy received from the Clerk. (*Bessey* v. *The Municipal Council of Grantham*, 11 U. C. Q. B. 156.)

(*h*) See note *a* to this section.

(*i*) The meaning is that the corporation shall have four days *at least* to answer the rule. (See *In re Sams and the City of Toronto*, 9 U. C. Q. B. 181.) The time under the old act was at least *eight* days. Where, under the old act, the rule nisi was obtained near the end of the term, and made returnable eight days after service, and defendants appeared during the following term and objected that the rule should have been to shew cause on a day certain, held that the objection, even if good, was waived by appearance. (*Perry* v. *The Town Council of Whitby*, 13 U. C. Q. B. 564.)

(*j*) The service is to be "on the Corporation," and therefore where the motion was to quash a by-law for taking stock in a railway company, on the return of the rule, and though the Corporation did not shew cause, the Court declined to hear counsel for the railway company. (*In re Billings and the Municipal Council of the Township of Gloucester*,

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gality, (*k*) and, according to the result of the application,

10 U. C. Q. B. 278.) In a subsequent case, where the Corporation declined to show cause, the Court refused to hear counsel for some of the ratepayers of the Corporation. (*In re Webb and the Corporation of the Township of Yarmouth*, Q. B. H. T. 1866.)

(*k*) The power of the Courts to deal summarily with by-laws, orders and resolutions of Municipal Councils, by quashing them on motion, depends wholly on this statute (*Sutherland* v. *The Municipal Council of East Nissouri*, 10 U. C. Q. B. 626); and that power will in general be exercised only when there is some illegality apparent on the face of the by-law, &c. (*In re Hill and the Municipal Council of the Township of Walsingham*, 9 U. C. Q. B. 310; *Grierson* v. *The Municipality of Ontario*, 9 U. C. Q. B. 623; *In re Standley and the Municipality of Vespra and Sunnidale*, 17 U. C. Q. B. 69; *In re Scarlett and the Corporation of York*, 14 U. C. C. P. 161; *In re Secord and the Corporation of the County of Lincoln*, 24 U. C. Q. B. 142) or where the by-law, order or resolution is shown to have been passed under circumstances which by the express terms of the statute make it illegal. (*In re Lafferty and the Municipal Council of Wentworth and Halton*, 8 U. C. Q. B. 232; *In re Sutherland and the Municipal Council of East Nissouri*, 10 U. C. Q. B. 626.) The exercise of the power is in every case discretionary; for it is not said the Court *shall* quash, but that it *may* quash, &c. (*In re Hodgson and the Municipal Council of York and Peel, and the Municipal Council of Ontario*, 18 U. C. Q. B. 268); in other words, the statute confers an authority with a discretion to abstain from its exercise (per Draper, C. J., in *In re Michie and the Corporation of the City of Toronto*, 11 U. C. C. P. 388; see also *Bogart and the Town Council of Belleville*, 6 U. C. C. P. 428); and where the by-law is legal on its face, and a great length of time has been allowed to elapse unexplained, between the passing of the by-law and the motion, the Court will abstain from the exercise of its discretionary power. (*In re Hill and the Municipality of Tecumseth*, 6 U. C. C. P. 297; *In re Cotter and the Municipality of Darlington*, 11 U. C. C. P. 265; *In re Grant and the City of Toronto*, 12 U. C. C. P. 357) especially if it be shown that work has been done under the by-law, money expended thereunder, or that the by-law has been otherwise so acted upon that its repeal would cause much inconvenience (*In re Hodgson and the Municipal Council of York and Peel and the Municipal Council of Ontario*, 18 U. C. Q. B. 268; *In re Ianson and the Corporation of the Township of Reach*, 19 U. C. Q. B. 591; *In re Michie and the Corporation of the City of Toronto*, 11 U. C. C. P. 379; *In re Scarlett and the Corporation of York*, 14 U. C. C. P. 161; *In re Drope and the Corporation of Hamilton*, 25 U. C. Q. B. 363) and where a party complaining of a by-law permits a term of the Courts of common law to elapse without moving to quash it, the Court of Chancery will refuse to interfere by injunction to restrain the Municipality from proceeding to enforce the provisions of the by-law. (*In re Carroll and Perth*, 10 Grant 64; *In re Grier and St. Vincent*, 12 Grant 330.) But of course a by-law substantially illegal cannot (subject to the provisions of sec. 204 of this act) afford any protection for what has been done under it, and so incidentally its validity may, in an action, be decided upon at common law by Common Law Courts. (*Sutherland* v. *The Municipal Council of East Nissouri*, 10 U. C. Q. B. 626.) But if the by-law be not void without being quashed, all proceedings duly had under it while in force, may be justified under it.

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award costs for or against the Corporation; (*l*) Provided always, that no application to quash any such By-law, Order or Resolution, in whole or in part, shall be entertained by any Court unless such application shall be made to such Court within one year from the passing of such By-law, (*m*) except

Proviso: time within which application must be made.

(*In re Barclay and the Municipality of the Township of Darlington*, 5 U. C. C. P. 432.) No action can be brought for anything done under it till the by-law is quashed. (See sec. 205.) It is no ground of illegality for quashing a by-law that it is not sealed with the seal of the Municipality, for unless so sealed it is not a legal by-law and there is no jurisdiction to quash it as such. (*In re Croft and the Municipality of the Township of Brooke*, 17 U. C. Q. B. 269.) But in some cases that which was intended to be a by-law and not in fact a by-law for the want of the corporate seal, may be looked upon as a "resolution or order," and so now subject to the summary jurisdiction of the Courts on application to quash. The Court has refused to quash a by-law on the ground that a quorum of the Council was not present at its passing. (*In re Sutherland and the Municipal Council of East Nissouri*, 10 U. C. Q. B. 626.) Where mere errors of calculation are charged, unless clearly made out, the Court will not quash the by-law. (*In re Paffard and the Corporation of the County of Lincoln*, 24 U. C. Q. B. 16) and even if shown to exist and to be extensive, the Court will lean strongly to the support of the by-law where it appears to have been acted upon. (*Grierson and the Municipality of Ontario*, 9 U. C. Q. B. 623; *Secord and the Corporation of the County of Lincoln*, 24 U. C. Q. B. 142.)

(*l*) The words of the old law were, "And if it shall appear to such Court that such by-law is legal, in whole or in the part complained of, to award costs in favor of such Corporation, or otherwise against such Corporation" (14 & 15 Vic. cap. 109, schd. No. 21); words which were held not to be retrospective (*Brown* v. *The Municipal Council of the County of York*, 9 U. C. Q. B. 453), and are in meaning much the same as the words of this section—according to the *result*, award costs *for* or *against* the Corporation. Where a Municipal Corporation, on being served with a rule *nisi*, repealed the by-law complained of, the Court notwithstanding obliged them to pay the costs of the application. (*In re Coyne and The Municipal Council of Dunwich*, 9 U. C. Q. B. 309.) But where a by-law was defective only in part, and the rule asked to quash the whole, the Court refused to give costs. (*In re Patterson and The Corporation of the County of Grey*, 18 U. C. Q. B. 189.)

(*m*) This proviso is new. Before this act, the Courts in general, after long and unexplained delay, abstained from the exercise of the discretionary power conferred upon them summarily to quash by-laws. (See note *k* to this section.) But no rule was laid down as to the time *within* which the discretionary power would or would not be exercised. Here it is declared that no application to quash any by-law, order or resolution shall be entertained, unless the application be made within one year from the passing of *such by-law* (not saying "order or resolution"). In cases coming under this part of the proviso, it is apprehended that a rule *nisi* would be refused; for it is declared that the application, under the circumstances mentioned, "shall *not* be entertained." The Court, even before this act, refused, after two years'

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in the case of a By-law requiring the assent of electors or rate-payers, when such By-law has not been submitted to, or has not received the assent of such electors or rate-payers, and in such case an application to quash such By-law may be made at any time (*n*)

WHEN CONFIRMED BY PROMULGATION.

Time after which By-law cannot be quashed, if properly promulgated

199. In case a By-law by which a rate is imposed has been specially promulgated in the manner hereinafter specified, (*o*) no application to quash the By-law shall be entertained after six months have elapsed since the promulgation. (*p*)

What shall be such promulgation.

200. Every special promulgation of a By-law within the meaning of this Act, (*q*) shall consist in the publication,

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delay, a rule *nisi* to quash a by-law of the Corporation of the city of Toronto to provide for the issue of debentures for esplanade purposes, saying, "In the exercise of the discretionary power given, * * * we should require a clear *prima facie* case to induce us to grant even a rule *nisi* to quash a by-law passed more than two years ago, and fully acted upon; besides which, for all that appears, this by law may possibly have been specially promulgated, (it does not appear it has not been,) and then an application to quash it must be made within six months after promulgation." (*In re Grant and The City of Toronto*, 12 U. C. C. P. 357.)

(*n*) It is only said that in the case of a by-law requiring the assent of electors or rate-payers, when such by-law has not been submitted to, or has not received the assent of such electors or rate-payers, that "*an application* to quash such by-law may be made at any time." It does not follow that on every such application the Court *shall* quash the by-law. The power to quash is still left to the discretion of the Court. (See note *k* to this section.)

(*o*) See secs. 201, 202, 203.

(*p*) The inconvenience of quashing a by-law imposing a rate, after it has been acted upon for months, is generally more than equal to the inconvenience of allowing a by-law, though technically defective, to exist. The effect of this section will be important, in curing technical defects in by-laws imposing rates. The limitation applies to by-laws which have been specially promulgated and commences at the time of such promulgation (per Draper, C.J., in *In re Bogart and Town Council of Belleville*, 6 U. C. C. P. 425) and where the by-law imposes a rate it would be well for the applicant moving against it more than six months after its passing, to show that it has not been specially promulgated. (*In re Grant and the Corporation of the City of Toronto*, 12 U. C. C. P. 357; but see also remarks of Draper, C. J., in *In re Bogart and the Town Council of Belleville*, 6 U. C. C. P. 425.) If the by-law moved against be one requiring the assent of electors, or rate payers, and it be shown that such by-law was not submitted to the electors or rate payers, the application to quash it may be made at any time. (See note *n* to sec. 198.)

(*q*) *A by-law.* Though the following section is expressly restricted

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through the Public Press, of a true copy of the By-law, and of the signature attesting its authenticity, (*r*) with a notice appended thereto of the time limited by Law for applications to the Courts to quash the same or any part thereof. (*s*)

And if the By-law imposes any rate.

201. In the case of a By-law by which a rate is imposed,(*t*) the promulgation shall be either by such publication of a copy of the By-law with such notice as aforesaid, or in lieu thereof by such publication of a notice setting forth the amount of the rate and giving the substance only of the other parts of the By-law with a similar notice of the time so limited for applications to quash as aforesaid ; (*u*) and the publication referred to in the preceding two sections, shall be in each public newspaper published weekly or oftener within the Municipality ; or if there be no such newspaper, then in at least two public newspapers published weekly or oftener nearest the Municipality, and the publication shall for the purpose aforesaid be continued in at least three consecutive numbers of the paper. (*v*)

Notice to be given.

202. The notice to be appended to every copy of a By-law for the purpose aforesaid, shall be to the effect following : (*a*)

Form of such notice.

"NOTICE.—The above is a true copy of a By-law passed by the Municipal Council of the Township of A, in the County of B, one of the United Counties of B, C and D (*or as the*

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to "a by-law by which a rate is imposed," this section appears to extend as well to *other* by-laws. Of course the publication will not legalize a by-law illegal and void on the face of it ; but it would seem that all formal or technical objections (if there is jurisdiction) are cured, and all collateral objections precluded, after the expiration of the time limited for applications to the Court to quash the same. (See sec. 204.)

(*r*) The publication is to be in each public newspaper, published weekly or oftener, within the municipality, &c., and to be continued in at least three consecutive numbers of the paper. (Sec. 201.)

(*s*) See sec. 202, as to *form* thereof.

(*t*) See note *q* to sec. 200.

(*u*) Two modes of promulgation are sanctioned—either may be adopted and the promulgation be sufficient. (See secs. 202 and 203 as to the *forms* of notice.)

(*v*) It would seem that the six months allowed for an application to quash a by-law are to be computed from the publication of the first number of the newspaper in which the same is made. (See sec. 202.)

(*a*) Where a statute expressly provides that a thing is to be done in a given form, the statute ought to be followed. (See *Warren* v. *Love*, 7 Dowl. P. C. 602; *Codrington* v. *Curlewis*, 9 Dowl. P. C. 968). The *form* here is given "in effect" to be followed.

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case may be) on the —— day of ——, 18 , and (*where the approval of the Governor in Council is by law required to give effect to such By-law*) approved by His Excellency the Governor in Council, on the —— day of ——, 18 ; and all persons are hereby required to take notice, that any one desirous of applying to have such By-law or any part thereof quashed, must make his application for that purpose to one of Her Majesty's Superior Courts of Common Law at Toronto, within six Calendar months at the farthest after the special promulgation thereof by the publication of this notice in three consecutive numbers of the following newspapers, viz: (*here naming the newspapers in which the publication is to be made*) or he will be too late to be heard in that behalf.

"G. H.
"*Township Clerk.*"

Notice setting forth the rate; and substance of by-law.

203. The notice setting forth the amount of the rate and giving the substance only of the other parts of the By-law, for the purpose aforesaid, shall be to the effect following: (*b*)

Form of such notice.

"Township A, in the County of B, one of the United Counties of B, C and D, in Upper Canada, to wit:

Notice is hereby given, that a By-law, intituled, (*set out the title*) and numbered (*give the number by which the By-law is designated,*) was on the —— day of ——, 18 , passed by the Municipal Council of the Township of A, in the County B, one of the United Counties of B, C and D, in Upper Canada, for the purpose of (*here set out in substance the object of the By-law*) as "raising the necessary funds to meet the general public expenses of the Township of —— for the year 18 ," *or* "for the purpose of raising and contracting for a loan of —— dollars, for making and macadamizing a Road from —— to ——" (*or otherwise, as the case may be*) and, (*and where the approval of the Governor in Council is by law required to give effect to such By-law*), approved by His Excellency the Governor in Council, on the —— day of ——, 18—; and all persons are hereby required to take notice, that any one desirous of applying to have such By-law or any part thereof quashed, must make his application for that purpose to one of Her Majesty's Superior Courts of Common Law at Toronto, within six calendar months, at the farthest, after the special promulgation thereof, by the publication of this notice in three consecutive numbers of the

(*b*) See note *a* to sec. 202.

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following newspapers, viz: (*here name the newspapers in which the publication is to be made*) or he will be too late to be heard in that behalf.

"G. H.,
"*Township Clerk.*"

If not moved against within the time limited, to be valid.

204. In case no application to quash any By-law be made within the time limited for that purpose, (*c*) the By-law, or so much thereof as is not the subject of any such application, or not quashed upon such application, so far as the same ordains, prescribes or directs anything within the proper competence of the Council to ordain, prescribe or direct, shall, notwithstanding any want of substance or form, either in the By-law itself or in the time or manner of passing the same, be a valid By-law. (*d*)

IF QUASHED, THE CORPORATION ONLY TO BE LIABLE.

Liability of Municipality for acts done

205. In case a By-law, Order or Resolution be illegal, in whole or in part, (*e*) and in case anything has been done under

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(*c*) This and sec. 200 seem to contemplate by-laws for *any* purpose, while secs. 199 and 201 and the *forms* of notice seem to apply only to by-laws imposing rates.

(*d*) Neglect to make an application within the time prescribed has the effect of curing any *want* of substance or form, either in the by-law, &c., itself, or in the *time* or *manner* of passing the same, provided what is ordained or directed by the by-law, &c., be within the proper competence of the Council. If not of the proper competence of the Council, a by-law affords under no circumstances protection for what is done under it. (*In re Sutherland and The Municipal Council of East Nissouri*, 10 U. C. Q. B. 626.)

(*e*) It is not necessary that the illegality should appear on the face of the by-law in order to bring into operation the provisions of this section. If, for example, in the case of a road, it be run through an orchard, contrary to the statute, there can be no question about the by-law being illegal. In such a case the party must apply and have the by-law quashed, before he can sue for anything done under the by-law. There may be cases where parties might maintain actions without taking that course; but it is apprehended the effect of the section is to deprive parties of any action whatever against any one, so long as the by-law has neither been quashed nor repealed, whenever it is made to appear that what is complained of was done under a by-law. (*Smith* v. *The Corporation of the City of Toronto*, 7 U. C. L. J. 239.) Whenever the by-law be quashed or repealed, the action must be brought against the Corporation alone, and not against the person acting under it. (*Black* v. *White et al.*, 18 U. C. Q. B. 371.) The quashing or repeal of the by-law is not to be regarded as taking the defence from parties acting under the by-law while in force; for all proceedings had under it while in force, if legalized by it, may, notwithstanding its repeal or being quashed, be justified under it. (*Per* Macaulay, C. J., in *Barclay* v. *The Municipality of Darlington*, 5 U. C. C. P. 438.)

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under a By-law afterwards quashed.

it (*f*) which, by reason of such illegality, gives any person a right of action, (*g*) no such action (*h*) shall be brought until one month has elapsed after the By-law, Order or Resolution has been quashed or repealed, nor until one month's notice, in writing, of the intention to bring such action, has been given to the Corporation; and every such action shall be brought against the Corporation alone, and not against any person acting under the By-law, Order or Resolution. (*i*)

(*f*) Are these words to be held to mean only anything done in the execution of the by-law, or for the purpose of carrying it out; or are they not to be construed to mean also anything done in reliance on the legality of the by-law, as, entering upon land which, if the by-law be valid, is a public highway, but which, if the by-law be not valid, leaves the parties exposed to be treated as trespassers? Unless the latter construction be adopted, the act will in this respect fail in many cases of the effect which must have been intended. (per Robinson, C. J., in *Black* v. *White et al.*, 18 U. C. Q. B. 369.)

(*g*) The right of action intended is a right of action for the recovery of damages, in which it may be important to tender amends. It does not therefore apply to actions of replevin, when brought merely to try the right to the property replevied. (*Wilson* v. *The Corporation of the County of Middlesex and William Langham*, 18 U. C. Q. B. 348.)

(*h*) See preceding note.

(*i*) It appears, therefore, that if anything has been done under a by-law, &c., which, being illegal, gives any person a right of action—

1. The action shall be brought against the Corporation that passed the by-law, &c., and not against any person who acted under it.
2. The action is not to be brought while the by-law, &c., is in force, nor until one calendar month has elapsed after the by-law, &c., is quashed or repealed.
3. Before bringing it, one calendar month's notice in writing of the intention to bring it must first be given to the Corporation.
4. Whether notice of action can be given *before* the by-law, &c., is quashed or repealed is a question, but material only in case the time for bringing the action is limited, and the time about to expire. (See *McKenzie* v. *The Mayor, Aldermen and Commonalty of Kingston*, 13 U. C. Q. B. 634.)

The section declares that no action shall be brought until the by-law, &c., has been quashed or repealed for one calendar month, and this, as already mentioned, precludes the bringing of the action while the by-law, &c., subsists (See *Carmichael* v. *Slater*, 9 U. C. C P. 423); but it does not follow that the Statutes of Limitations only begin to run from the time of quashing or repealing. It is clear that actions may be brought (though only against the Corporation) for things done under the illegal by-law, &c., that is things done in pursuance of, or in execution of it, or under its authority while in force. The right of action may be held to vest the moment the thing is done, and, if so, every statute limiting a right of action of the particular kind would begin to run forthwith. Were it not so, very stale matters might be made grounds of action against Municipal Councils, and which (in the case of individuals) would be outlawed.

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TENDER OF AMENDS BY.

206. In case the Corporation tenders amends to the plaintiff or his attorney, (*j*) if such tender be pleaded and (if traversed) proved, (*k*) and if no more than the amount tendered is recovered, the plaintiff shall have no costs, but costs shall be taxed to the defendant, and set off against the verdict, and the balance due to either party shall be recovered as in ordinary cases. (*l*) Tender of amends.

(*j*) The law as to tender is not much understood by the public, and requires some remarks in this place.

1. *Definition.*—A tender in this section means the offering of money in satisfaction of a cause of action arising out of something done under a by-law, order or resolution, quashed or repealed.

2. *How made.*—A tender must be unqualified and unconditional. (*Mitchell* v. *King*, 6 C. & P. 237; *Jennings* v. *Major*, 8 C. & P. 61; *Strong* v. *Harvey*, 3 Bing. 304.) Whether conditional or not, is a question for the jury (*Marsden* v. *Goode*, 2 C. & K. 133; *Milburn* v. *Milburn*, 4 U. C. Q. B. 179.) Strictly speaking, the tender ought to be of specie; but a tender in bank notes, if not objected to on the ground of being notes, will be good. (*Blow* v. *Russell*, 1 C. & P. 365.) The precise sum intended, or more, must be tendered, without requiring change. (*Brady* v. *Jones*, 2 D. & R. 305.) The money ought to be actually produced (*Kraus* v. *Arnold*, 7 Moo. 59; *Leatherhale* v. *Sweepstone*, 3 C. & P. 342; *Thompson* v. *Hamilton*, 5 U. C. O. S. 111); but this may be dispensed with by the party to whom the tender is made, as, where defendant said he had the money in his pocket, and plaintiff said, "You need not give yourself the trouble of offering it, for I will not take it." (*Douglass* v. *Patrick*, 3 T. R. 684; *Jackson* v. *Jacobs*, 3 Bing. N. C. 869.) A receipt for the money cannot be insisted upon. (*Cole* v. *Blake*, 1 Peake, 238.)

3. *To whom made.*—Under this section the amends may be tendered "to the plaintiff or his attorney." A tender, strictly speaking, ought to be made before the writ is sued out, and if made to the plaintff himself would be more satisfactory than if made to his attorney. But if the attorney is authorized to settle the business, and writes to defendants previous to suing out the writ, warning them of the action, unless they pay him the money or the like, the tender may clearly be made to the attorney. (Sellon, Pr. 2, 315.) The attorney must, under any circumstances, be one employed in the particular action, and not merely one generally employed by plaintiff. (*Ib.*)

(*k*) It is not enacted that the tender may be given in evidence under the general issue, and it is apprehended that it ought to be specially pleaded.

(*l*) The object of the tender is to prevent useless litigation. The tender admits a cause of action, but limits the amount of damages arising therefrom. The party tendering in effect says, "I admit you have a right to bring this action, but I do not admit that you are entitled to any damages beyond the amount tendered." If plaintiff declines the tender, and recovers no more than the amount tendered, he loses his costs, and, worse still, is compelled to pay the costs of defendant, which may be set off against his verdict.

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OFFENCES AGAINST BY-LAWS.

Certain offences respecting by-laws to be misdemeanors.

207. In case any Officer of a Municipal Corporation neglects or refuses to carry into effect a By-law for paying a debt, and so neglects or refuses under colour of a By-law illegally attempting to repeal such first mentioned By-law, or to alter the same so as to diminish the amount to be levied under it, (*m*) such officer shall be guilty of a misdemeanor, and be punished by fine or imprisonment, or both, at the discretion of the Court whose duty it may be to pass sentence upon him. (*n*)

Jurisdiction to try offences against.

Summary proceedings.

208. In case an offence is committed against a By-law of a Council, for the prosecution of which offence no other provision is made, (*o*) any Justice of the Peace having jurisdiction in the locality where the offender resides, or where the offence was committed, whether the Justice is a member of the Council or not, may try and determine any prosecution for the offence. (*p*)

(*m*) The object of this section is, under the penalty mentioned, to compel Municipal Corporations and their officers to keep faith with creditors. When the latter advance money upon the security of a by-law for its repayment in whole or in part, within a specified period at a specified rate, any by-law attempting to repeal such mentioned by-law or altering the same, so as to diminish the amount to be levied under it, would be a fraud whether so designed or not. (But see sec. 234, *et seq.*) Besides it is the duty of the Treasurer or Chamberlain of every Municipality to see that the money collected under such by-law is properly applied to the payment of interest and principal of debentures issued under the by-law. (Sec. 213.)

(*n*) See note *t* to sec. 55.

(*o*) The Corporation of any County, Township, City, Town or Incorporated Village, may pass by-laws for inflicting *reasonable fines* and penalties not exceeding $50, exclusive of costs, for breach of any of the by-laws of the Corporation, (sec. 246, sub-sec. 6 *b*,) and for inflicting *reasonable punishment or imprisonment*, with or without hard labor, for any period not exceeding 21 days, for breach of any of the by-laws of the Corporation, in case of non-payment of the fine inflicted for any such breach, and there being no distress out of which the fine can be levied, with certain specified exceptions. (Sec. 246, sub-sec. 8.)

(*p*) The jurisdiction of the Justice is made to depend either on the locality where the offender resides, or where the offence was committed. A Justice having jurisdiction in either locality may not only try but determine the prosecution. The authority of a justice, who is so by virtue of his office as Mayor, Reeve, &c., is limited to the County in which his Municipality is situate (sec. 357) and the authority of a Justice of the Peace appointed by commission from the Crown, is limited to the County therein specified. It is in no case attached to the person so as to be capable of being exerted elsewhere than within these limits, "Being out of the County where he is in commission,

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Evidence.

209. The Justice or other authority before whom a prosecution is had for an offence against a Municipal By-law, may convict the offender on the oath or affirmation of any credible witness, and shall award the whole or such part of the penalty or punishment imposed by the By-law, as he shall think fit, with the costs of prosecution, and may, by warrant, under the hand and seal of the Justice or other authority, or in case two or more Justices act together therein, then under the hand and seal of one of them, cause any such pecuniary penalty and costs, or costs only, if not forthwith paid, to be levied by distress and sale of the goods and chattels of the offender. (*q*)

Penalty and costs;

How levied.

Commitment in default of distress.

210. In case of there being no distress found, out of which the penalty can be levied, the Justice may commit the offender to the Common Gaol, house of correction, or nearest lock-up house, for the term or some part thereof, specified in the By-law. (*r*)

Fines, how applied.

211. When the pecuniary penalty has been levied, one moiety thereof shall go to the informer or prosecutor, and the other moiety to the Corporation, unless the prosecution is brought in the name of the Corporation, and in that case the whole of the pecuniary penalty shall be paid to the Corporation. (*s*)

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he is but a private man." (See Paley on Convictions, 4 edn. 16, 17; see also, *The Queen* v. *Row*, 14 U. C. C. P. 307.)

(*q*) The powers of the Justice or other authority under this section are the following:

1. To convict the offender on the oath or affirmation of any credible witness.
2. To award the penalty or punishment imposed by the by-law, with the costs of the prosecution.
3. By warrant, to cause any pecuniary penalty and costs, or costs only (*as the case may be*), to be levied by distress and sale of the goods and chattels of the offender.

See next section as to imprisonment in default of distress.

(*r*) The term ought not in general to exceed twenty-one days. (See sec. 246, sub-sec. 8.)

(*s*) It is the policy of most statutes inflicting penalties, to give part of the penalty to the informer. At first it was commonly one-fourth; afterwards, by later statutes, one-third; and lastly, as in the case of the section here annotated, one moiety or half of the penalty. "Even this large proportion," says an eminent writer on the penal statutes, "seldom hath its effect." (Paley on Convictions, 237.) Possibly the informer, notwithstanding his expectation of, and interest in, the penalty, is, "a credible witness," within the meaning of the preceding section; for no person offered as a witness, with a few excep-

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Jurisdiction of Mayors and Police Magistrates over penal offences.

212. The Police Magistrate, or, when there is no Police Magistrate, the Mayor of a Town or City, shall have jurisdiction, in addition to his other powers, to try and determine all prosecutions for offences against the By-laws of the Town or City, and for penalties for refusing to accept office therein, or to make the necessary declarations of qualification and office.(*t*)

DEBENTURES, &c.

How to be made.

Debentures, bonds, &c., how to be executed.

213. All Debentures and other specialties duly authorized to be executed on behalf of a Municipal Corporation shall, unless otherwise specially authorized or provided, be sealed with the seal of the Corporation, and be signed by the head thereof, or by some other person authorized by By-law to sign the same, otherwise the same shall not be valid; (*a*) and it

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tions, is now, by reason of incapacity from crime or interest, to be excluded from giving evidence. (Con. Stat. U. C. cap. 32, sec. 3.)

(*t*) A Police Magistrate has generally, as regards the city or town of which he is an officer, the same jurisdiction as Justices of the Peace have in their several counties, and his proceedings should be conducted in the same manner as if he were a commissioned Justice of the Peace. He is not only *ex officio* a Justice of the Peace for the City or Town for which he holds office, but as well for the County or Union of Counties in which the City or Town is situate (s. 373); and in some cases he has concurrent powers with the Recorder of the City. (Con. Stat. Can., cap 105, s. 30). The Mayor may, in the absence of the Police Magistrate, act in his place (s. 367). Any Justice of the Peace having jurisdiction in a Town, may, at the request of the Mayor, act in his stead at the Police Office. (*Ib.*)

(*a*) It is the duty of the Clerk of every Municipal Corporation, subject to a severe penalty, within two weeks after the final passing of any by-law passed for the purpose of raising money by the issue of debentures, and before the sale or contract of sale of the debentures, to transmit to the County Registrar a copy of the by-law, duly certified, and other like information, for the purpose of registration. (Con. Stat. Can. cap. 84, sec. 212.) It has been held that a debenture issued by a Municipal Council, under its corporate seal, and signed by the head of the Corporation, for the payment of a debt due or loan contracted under a by-law which does not provide by special rate for payment of the debt or loan, does not estop the Municipal Corporation from setting up as a defence to an action on the debentures, the invalidity of the by-law. (*Mellish* v. *The Town Council of the Town of Brantford*, 2 U. C. C. P. 35.) A person negotiating the sale of a Municipal debenture is not answerable that the Municipality will pay the amount secured by the debenture. (*Sceally* v. *McCallum*, 9 Grant, 434.) Where, therefore, a Township Municipality, in pursuance of the Municipal Corporation Act of 1849, passed a by-law for the purpose of granting a loan to the Port Burwell Harbour Company, and issued debentures thereunder which were subsequently declared to be illegal in conse-

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shall be the duty of the Treasurer or Chamberlain of the Municipality to see that the money collected under such By-law is properly applied to the payment of the interest and principal of such Debentures. (*b*)

TRANSFERABLE BY DELIVERY.

Debentures transferable by delivery, if payable to bearer.

214. Any Debenture heretofore issued, or issued after this Act takes effect, under the formalities required by law, by any Municipal or Provisional Municipal Corporation, payable to bearer or to any person named therein or bearer, (*c*) may be transferred by delivery, and such transfer shall vest the property of such Debenture in the holder and enable him to maintain an action thereupon in his own name. (*d*)

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quence of the road company not having been properly constituted, the Court of Chancery, in the absence of any proof of fraud, refused to order one of the directors of the road company to refund the amount paid to him upon the sale of one of such debentures. (*Ib.*)

(*b*) The latter part of this section is new, and, like sec. 207, intended for the protection of creditors. The duty of the Treasurer or Chamberlain to see that the money collected under the by-law is properly applied, is made imperative; and no subsequent by-law or resolution of the Council would in law be any excuse for neglect of that duty. Besides, neglect on the part of a Municipal officer to carry into effect a by-law for paying a debt, is made a criminal offence. (Sec. 207.)

(*c*) It is not *all* debentures that are made negotiable, but only such as are issued "under the formalities required by law." This expression includes not only what is required by sec. 213, which provides for sealing with the seal of the Corporation, and signature by the head of it, but also what is required under sec. 226, which provides that every by-law for the creation of a debt or negotiation of a loan shall, in order to bind the Municipality, settle a special rate for the payment of such debt or loan, and that the by-law shall contain certain specified recitals. (*Per* Draper, C. J., in *The Trust and Loan Company of Upper Canada* v. *The City of Hamilton*, 7 U. C. C. P. 103.) And it would seem to follow that even against a *bonâ fide* holder for value, without notice, these defences could be raised. (See however *Anglin* v. *The Municipality of Kingston*, 16 U. C. Q. B. 121; *Crawford et al.* v. *The Corporation of the Town of Cobourg*, 21 U. C. Q. B. 113.)

(*d*) A debenture is a chose in action; and it is an ordinary rule of law that a chose in action cannot be transferred so as to give the transferee a right to sue at law upon it in his own name. (Smith's Mercantile Law, 5 Ed. 229.) The chief exceptions are bills of exchange and promissory notes, which for the benefit of trade have been made negotiable. Another exception is that of debentures issued under this act. Such debentures, when issued under the formalities required by law, are choses in action, transferable by endorsement and delivery where made so, and when so made become analogous to bills of exchange or promissory notes in many particulars. The fact that a debenture was, when duly signed and sealed, feloniously stolen from the Corporation, and transferred to the plaintiff, a *bonâ fide* holder for

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Or, if endorsed in blank, when payable to order.

215. Any Debenture issued as aforesaid, (*e*) and made payable to any person or order, shall, after the endorsation thereof in blank by such person, be transferable by delivery from the time of the endorsation, (*f*) and the transfer shall vest the property thereof in the holder, and enable him to maintain an action thereupon in his own name. (*g*)

In pleading, sufficient to describe plaintiff as the holder.

216. In a suit or action upon any such Debenture, (*h*) it shall not be necessary for the plaintiff to set forth in the declaration or other pleading, or to prove, the mode by which he became the holder of the Debenture, or to set forth or to prove the notices, by-laws or other proceedings under and by virtue of which the Debenture was issued, but it shall be sufficient in such pleading to describe the plaintiff as the holder of the Debenture (alleging the indorsation in blank, if any) and shortly to state its legal effect and purport, and to make proof accordingly. (*i*)

Full amount recoverable, though negotiated at interest exceeding

217. Any such Debenture, issued as aforesaid, (*j*) shall be valid, and recoverable to the full amount, notwithstanding its negociation by such Corporation at a rate less than par, or at a rate of interest greater than six per centum per annum,

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value, affords no defence. (*The Trust and Loan Company* v. *The City of Hamilton*, 7 U. C. C. P. 98.) The original holder of a debenture, or any subsequent transferree thereof, may from time to time cause to be registered with the County Registrar the name of such original holder or subsequent transferree (Con. Stat. Can. cap. 84, sec. 6); and such holder or last registered transferree is to be deemed *primâ facie* the legal owner and possessor of the debenture. (*Ib.*)

(*e*) See note *c* to sec. 214.

(*f*) Indorsements are either full or blank. A full indorsement is one which mentions the name of the party in whose favor it is made; an indorsement in blank, one which does not mention such name. (Smith's Mercantile Law, 5 Ed. 230.) The latter is the only form of indorsement contemplated by this section. It is a question whether the indorsement of a debenture will, like the indorsement of a bill or note, guarantee its payment. (See *Allen* v. *Walker*, 2 M. & W. 317.)

(*g*) See note *d* to sec. 214.

(*h*) See note *c* to sec. 214.

(*i*) The provisions of this section are designed to simplify proceedings at law against the Municipality by the holder of a debenture for the amount which it represents. They extend both to pleading and to evidence. (See *The Trust and Loan Company of Upper Canada* v. *The City of Hamilton*, 7 U. C. C. P. 98; *Anglin* v. *The City of Kingston*, 16 U. C. Q. B. 121; *Crawford et al.* v. *The Corporation of the Town of Cobourg*, 21 U. C. Q. B. 113.)

(*j*) See note *c* to sec. 214.

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or although a rate of interest greater than six per centum per annum is reserved thereby or made payable thereon. (*k*) six per cent. or below par.

RESTRICTIONS UPON COUNCILS.

218. No Council shall act as bankers, or issue any Bond, Bill, Note, Debenture or other undertaking, of any kind or in any form, in the nature of a Bank Bill or Note, or intended to form a circulating medium, or to supply the place of specie, or to pass as money; (*l*) nor, unless specially authorized so to do, shall any Council make or give any Bond, Bill, Note, Debenture or other undertaking, for the payment of a less amount than one hundred dollars; (*m*) and any Bond, Bill, Note, Debenture or other undertaking issued in contravention of this section, shall be void. (*n*) Restrictions upon Councils as to banking, issuing bills, bonds, &c.

219. In case any person issues or makes, or assists in issuing or making, or knowingly utters or tenders in payment or exchange, any Bond, Bill, Note, Debenture or undertaking, of any kind or in any form, in the nature of a Bank Bill or Note, intended to form a circulating medium, or to supply the place of specie, or to pass as money, contrary to this Act, such person shall be guilty of a misdemeanor. (*o*) To issue bank notes, &c., contrary to this Act, declared a misdemeanor.

220. No Council shall have power to give any person an exclusive right of exercising within the Municipality any trade or calling, or to impose a special tax on any person exercising the same, or to require a license to be taken for exercising Granting monopolies prohibited.

(*k*) And in this respect resembles the law of bills and notes. Besides, Municipal Corporations are not restricted any more than individuals as to the rate of interest to be received upon moneys loaned by them, but may take any rate of interest agreed on. (*The Corporation of the Township of Westminster* v. *Fox*, 19 U. C. Q. B. 208; *The Corporation of North Gwillimbury* v. *Moore et al.*, 15 U. C. C. P. 445.)

(*l*) The object of this and the following section is to confine Municipal Councils within the legitimate sphere of their organization. The section under consideration is more particularly directed against the issue of undertakings "intending to form a circulating medium, or to supply the place of specie, or to pass as money."

(*m*) This was the old law. (See 12 Vic. cap. 81, sec. 183.)

(*n*) Parties contravening the provisions of this section are by the next section made criminally responsible.

(*o*) In case any person—

1. Issues or makes;
2. Assists in issuing or making;
3. Knowingly utters or tenders in payment or exchange,

Any bond, bill, note, debenture or undertaking, &c., contrary to this Act;

He shall be guilty of a misdemeanor. (See note *t* to sec. 55.)

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the same, unless authorized or required by statute so to do; (*p*) but the Council may direct a fee, not exceeding one dollar, to be paid to the proper officer for a certificate of compliance with any regulations in regard to such trade or calling. (*q*)

Except as to any ferry.

221. But nothing in this Act contained shall prevent a Council from granting exclusive privileges in any ferry, which may be vested in the Corporation represented by such Council. (*r*)

(*p*) Monopolies are odious to the law. A monopoly is when the sale of any merchandise or commodity is restrained to one or to a certain number (11 Co. 86), and has three inseparable consequents—the increase of the price, the badness of the wares, the impoverishment of others. (*Ib.*) By statute 21 Jac. 2, all monopolies and all commissions, grants, licenses, &c., to any person, &c., for any sale, buying, selling, making, working, using of a thing, &c., are void. And any one grieved, &c., may have an action on the statute, and recover treble damages and double costs. So monopolies are contrary to Magna Charta. (2 Inst. 63.) By statute 38 Ed. 3, a merchant may freely deal in all manner of merchandize. The statute of 21 Jac. 2, does not extend to letters patent for inventions, &c. The first part of this section is simply a declaration of the common law. No Municipal Council has a right to grant a monopoly, "unless authorized or required by statute so to do."

(*q*) A by-law made only for the *regulation* of any one in the use or exercise of that which he has a right to do, may be good. (Com. Dig. By-law B. 2.)

(*r*) A ferry is a franchise which cannot be set up without the license of the Crown, or the authority of some body corporate or person empowered by the Crown or the Legislature to grant the same. (Com. Dig. "Piscary," B.) Ferries, when granted by the Crown in Upper Canada, are generally put up to public competition, and leased for a term of not more than seven years. (Con. Stat. U. C. cap. 46, sec. 3.) The leases or licenses are under the great seal. (*Ib.* sec. 2.) Where the ferry is required over any stream, the two shores of which are in different municipalities, not in the same county, a license may be granted to either of the municipalities exclusively, or to both conjointly, as may be most conducive to the public interest. (*Ib.* sec. 5.) Where one shore is within the limits of a city, town or incorporated village, and the other in a township or rural municipality, the license must be issued to the city, town or incorporated village. (*Ib.* sec. 6.) The license may be for any period not exceeding fifty years. (*Ib.* sec. 2.) It confers a right on the municipality or municipalities to establish a ferry from shore to shore, &c., upon condition that the craft to be used shall be propelled by steam, &c. (*Ib.* sec. 7.) Upon receipt of any such license, the municipality or municipalities may pass a by-law declaring their determination to sublet the ferry, and may sublet the same, for such price and upon such terms, &c., as they deem best. (*Ib.* sec. 8.) No license of a ferry on the line of the Provincial frontier can be granted to any person or body corporate beyond the limits of the Province, but must in all cases be granted to the municipality within the limits of

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222. In case a member of the Council of any Municipality, either in his own name or the name of another, and either alone or jointly with another, enters into a contract of any kind, or makes a purchase or sale in which the Corporation is a party interested, and which is on that account void in equity, the same contract, purchase or sale, shall also be held void in any action at law thereon against the Corporation. (*s*)

Contracts by members with the Corporation void in law if void in equity.

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which the ferry exists, &c. (*Ib.* sec. 9.) Any person interfering with the rights, &c., of a licensed ferryman, may be summarily proceeded against. (*Ib.* sec. 10.) But any person may use for his own accommodation his own vessel or craft to cross the river or stream over which a ferry exists. (*Ib.* sec. 11.) A boat may also, it seems, lawfully ply with passengers from one of the *termini* of a ferry to a place without the limits of the ferry, however near to them, if done *bonâ fide* and not to injure the ferryman's right. If there be an exclusive ferry from A. to B., it does not prevent persons from going by any other boat from A. directly to C., though it be near B., provided it be not done fraudulently, and as a pretence for avoiding the regular ferry. (Com. Dig. "Piscary," B.)

(*s*) The settled rule in equity is that he who is entrusted with the business of others cannot be allowed to make such business an object of interest to himself.

This rule does not depend on reasoning technical in its character or local in its application. It is founded upon principles of reason, of morality and of public policy. It has its foundation in the very constitution of our nature, for it has authoritatively been declared that a man cannot serve two masters, and is enforced wherever a well regulated system of jurisprudence prevails (per the Chancellor in *City of Toronto* v. *Bowes*, 4 Grant 504.) One who has power, owing to the frailty of human nature, will be too readily seized with the inclination to use the opportunity for securing his own interest at the expense of of that for which he is entrusted. (*Governor and Company of York Building Society* v. *Mackenzie*, 8 Brown P. C. 42.) The wise policy of the law has therefore put the sting of disability into the temptation as a defensive weapon against the strength of the danger which lies in the situation. This conflict of interest is the rock for shunning which the disability under consideration has obtained its force, by making the person who has one part entrusted to him incapable of acting on the other side, that he may not be seduced by temptation and opportunity from the duty of his trust. (*Ib.* 66) The law wil lin no case permit persons who have undertaken a character or a charge, to change or invert that character by leaving it and acting for themselves in a business in which their character binds them to act for others. (*Ib.*) The application of the rule may in some instances appear to bear hard upon individuals who have committed no moral wrong; but it is essential to the keeping of all parties filling a fiduciary character to their duty to preserve the rule in its integrity, and to apply it to every case as it arises, which justly falls within its principle (per Esten, V.C., in *City of Toronto* v. *Bowes*, 4 Grant 530.)

To deny the application of the rule to Municipal bodies, would be to deprive it of much of its value; for the well working of the Municipal

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COSTS OF MANDAMUS.

Costs of Mandamus.

223. Upon any application for a Writ of Mandamus for or against a Municipal Corporation, the Courts may, in their discretion, grant or refuse costs. (*t*)

EXECUTIONS AGAINST CORPORATIONS.

Proceedings on Writs of execution

224. Any Writ of Execution against a Municipal Corporation, (*a*) may be endorsed with a direction to the Sheriff to

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system through which a large portion of the affairs of this country are administered, must depend very much upon the freedom from abuse with which they are conducted. It is obvious that nothing can more tend to correct the tendency to abuse, than to make abuses unprofitable to those who engage in them, and to have them stamped as abuses in Courts of Justice (per Esten, V.C., *Ib.* p, 531.) The tendency to abuse may indeed be in part corrected by public opinion; but public opinion itself is acted upon by the mode in which Courts deal with such abuses as are brought within their cognizance. It has been well observed that the view taken by Courts of Equity with respect to morality of conduct among all parties, is one of the highest morality; and this cannot fail to have a salutary effect upon public opinion itself. Just as, on the other hand, if a low standard of morality were permitted by the Courts, its inevitable tendency would be the demoralization of the public feeling in regard to transactions of a questionable character. (*Ib.*)

The object of this section is to extend the application of this equitable rule to Courts of law, and not simply leave the contract to be avoided in equity, but to make it void in any Court of law in any action therein against the Corporation. (See note *h* to sec. 73.)

Where the Mayor of the City of Toronto secretly contracted to purchase at a discount, a large amount of the debentures of the City which were expected to be issued under a future by-law of the City Council, and was himself afterwards an active party in procuring and giving effect to the by-law which was subsequently passed, the Court of Chancery held him to be a trustee for the City of the profit he derived from the transaction (*The City of Toronto* v. *Bowes*, 4 Grant 489, which decision, Robinson, C. J., dissenting, was affirmed in appeal, 6 Grant, 1, and afterwards upheld by the Privy Council.) So where a member of a Municipal Corporation agreed with another party to take a contract from the Corporation for the execution of certain works in his name, the profits whereof were to be divided between the parties, it was *held* that such a contract was in contravention of the municipal law, and the Court of Chancery refused to enforce the agreement for a partnership. (*Collins* v. *Swindle*, 6 Grant 282.)

(*t*) At common law, when rule *nisi* for a mandamus was discharged, the Courts gave costs or not to the person opposing it, according to their discretion in each case. (*Kennedy* v. *The Municipal Council of Sandwich*, 9 U. C. Q. B. 326.)

(*a*) A Municipal Corporation being liable to be sued (see note to sec. 4), is liable to the consequence of a suit, viz., execution. As the assets of the Corporation are not the property of the members of the

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levy the amount thereof by rate, (*b*) and the proceedings thereon shall then be the following: (*c*)

against Municipalities.

1. The Sheriff shall deliver a copy of the Writ and endorsement to the Chamberlain or Treasurer, or leave such copy at the office or dwelling house of that officer, with a statement in writing of the Sheriff's fees, and of the amount required to satisfy such execution, including in such amount the interest calculated to some day as near as is convenient to the day of the service; (*d*)

Sheriff to deliver statement to Treasurer.

2. In case the amount with interest thereon from the day mentioned in the statement, be not paid to the Sheriff within one month after the service, the Sheriff shall examine the assessment rolls of the Corporation, and shall, in like manner as rates are struck for general municipal purposes, strike a rate sufficient in the dollar to cover the amount due on the execution, with such addition to the same as the Sheriff deems sufficient to cover the interest, his own fees and the Collector's

If not paid, a rate to be struck.

Corporation, but of the people whom they represent, the form of proceeding by execution against such a corporation, must, under certain circumstances, differ from that of proceeding by execution against an individual.

(*b*) The writ *may* (not must) be indorsed with a direction to the Sheriff to levy the amount by rate. The writ may also, it is apprehended, be indorsed, as in the case of writs of execution against individuals, either to levy of goods or lands (*or as the case may be*) of the Corporation, in which event a rate would not be contemplated and probably would not be necessary. But it is only when indorsed to levy by rate, that the following sub-sections are at all applicable.

(*c*) If the writ be indorsed by rate, the proceedings *shall* be as directed.

(*d*) The Sheriff is to deliver:

1. *A copy of the writ* and indorsement to the Chamberlain or Treasurer *or* leave such copy at the office or dwelling house of that officer.
2. *With a statement in writing* of the Sheriff's fees and of the amount required to satisfy such execution, including in such amount the interest calculated to some day as near as is convenient to the day of service.

The Sheriff is not entitled to poundage on writs of execution against Municipal Corporations, unless he actually make the money. (*Grant v. The Corporation of the City of Hamilton*, 2 U. C. L. J., N. S. 262.) Where a settlement is obtained by means of the presence of the Sheriff, he is entitled to be paid reasonable compensation for the services performed, although no special fee be assigned for such service in any statute or table of costs. (*Ib.*) If the Sheriff make the money, it would seem that he is entitled to poundage, though he may under this section have levied a rate to collect the amount. (*Ib.*)

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percentage, up to the time when such rate will probably be available; (*e*)

Sheriff's precept to levy.

3. The Sheriff shall thereupon issue a precept or precepts, under his hand and seal of office, directed to the Collector or respective Collectors of the Corporation, and shall annex to every precept the roll of such rate, and shall by such precept after reciting the Writ, and that the Corporation had neglected to satisfy the same, and referring to the roll annexed to the precept, command the Collector or Collectors within their respective jurisdictions, to levy such rate at the time and in the manner by law required in respect of the general annual rates; (*f*)

Who to collect the rate.

4. In case at the time for levying the annual rates next after the receipt of such precept, the Collectors have a general rate roll delivered to them for such year, they shall add a column thereto, headed, "Execution rate in A. B., *vs.* The Township" (*or as the case may be, adding a similar column for each execution if more than one,*) and shall insert therein the amount by such precept required to be levied upon each person respectively, and shall levy the amount of such execution rate as aforesaid, and shall within the time they are by law required to make the returns of the general annual rate, return to the Sheriff the precept with the amount levied thereon, after deducting their percentage; (*g*)

(*e*) It is the duty of the Sheriff to strike a rate "sufficient," &c. No provision exists for the striking of a second rate, in the event of the first proving insufficient. If the amount levied should be *more* than sufficient, provision is made for the disposition of the surplus. (Sub-sec. 5.) It would appear to be necessary where there are in the hands of the Sheriff, at the same time, several writs of execution against the same Corporation, to strike a rate for each particular writ. (See *Grant* v. *The Corporation of the City of Hamilton*, 2 U. C. L. J., N. S. 262.)

(*f*) The *first* thing for the Sheriff to do is, to deliver a copy of the writ, indorsement and statement, in the first sub-section mentioned.

The *second*, after the expiration of a month, to examine the assessment rolls of the Corporation and strike a rate, &c., as in the second sub-section directed.

The *third*, to issue a precept such as in the sub-section here annotated mentioned. If the Corporation withhold the assessment rolls from the Sheriff, his remedy would be to apply to the Court by mandamus, to compel them to submit the rolls to him. (See *Grant* v. *The Corporation of the City of Hamilton*, 2 U. C. L. J., N. S. 262.)

(*g*) The duties of Collectors under this clause are the following:

1. To add a column to the general roll, with the heading directed.
2. To insert therein the amount by the precept required to be levied &c.

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5. The Sheriff shall, after satisfying the Execution and all fees thereon, pay any surplus, within ten days after receiving the same, to the Chamberlain or Treasurer, for the general puposes of the Corporation; (*h*) Surplus.

6. The Clerk, Assessors and Collectors of the Corporation shall, for all purposes connected with carrying into effect, or permitting or assisting the Sheriff to carry into effect, the provisions of this Act, with respect to such executions, be deemed to be Officers of the Court out of which the Writ issued, and as such shall be amenable to the Court, and may be proceeded against by attachment or otherwise, to compel them to perform the duties hereby imposed upon them. (*i*) Clerk, Assessors and Collectors to be Officers of the Court from which Writ issues.

DEBTS AND RATES.

Yearly Rates and Debts.

225. The Council of every Township, and the Council of every County, and of every Provisional Corporation, and of every City, and of every Town, and of every incorporated Village, respectively, shall assess and levy on the whole ratable property within its jurisdiction, (*j*) a sufficient sum in each year to pay all valid debts of the Corporation, whether of principal or interest, falling due within the year; (*k*) but no such Council shall assess and levy in any one year more than an aggregate rate of two cents in the dollar on the actual value, Yearly rates to be levied, sufficient to pay all debts payable within the year.

3. To levy the amount of the execution rate.

4. To return to the Sheriff, within the time limited, the precept, with the amount levied, after deducting per centage.

(*h*) See note *e* to this section.

(*i*) This is a most important clause. The power of the Court over its officers is of a very summary nature. They may be punished by process of attachment for contempt in disobeying its rules or orders.

(*j*) The assessment is to be made on "the *whole* ratable property," &c. An assessment, therefore, on wild lands alone would be invalid. (*Tylee* v. *The Municipality of Waterloo*, 9 U. C. Q. B. 572.)

(*k*) The power given is to assess and levy, &c., a sufficient sum in *each* year to pay all *valid* debts, &c., *falling due within the year*. It is not easy to define what is meant by "a valid debt." It may be described as a debt which the Corporation is legally liable to pay, and the payment of which may be enforced by process of law. Then the assessment is to be for a valid debt "falling *due* within the year;" therefore an assessment may be made for a debt *incurred* in a previous year, provided it is a valid debt, and fall due within the year in which the assessment is made. The general inconvenience of retrospective rates has in England been long known and recognized in the courts of law, on the ground that succeeding rate-payers ought not to be made to pay for services of which their predecessors have had the benefit. (See *The King* v. *Chapel-warden of Haworth*, 12 East, 556; *Cortis* v. *Kent Waterworks Company*, 7 B. & C. 314; *The King* v. *Justices of Flintshire*, 5 B. & Ald. 761; *Woods* v. *Reed*, 2 M. & W. 777; *Jones* v. *Johnson*, 5

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exclusive of School rates. (*l*) And if in any Municipality the

Ex. 862; S. C. in Error, 7 Ex. 452.) One object of the law, as rate-payers fluctuate, is to protect present inhabitants from being burthened with the expenses of their predecessors. (*The King* v. *Wavell et al.*, Doug. 116; *The King* v. *Goodcheap*, 6 T. R. 159; *Attorney-General* v. *Wigan*, 18 Jurist, 299.) As a rule, money required for municipal purposes ought to be raised as the law directs—beforehand, instead of being in any manner or by any person advanced, in the expectation of reimbursement by the municipality. (See *The King* v. *Chapel-warden of Bradford*, 12 East, 556; *Tawney's Case*, 2 Rayd. 1009; *Dawson* v. *Wilkinson*, Cases Temp. Hard. 381. But see *Burnham* v. *The Corporation of Peterborough*, 8 Grant, 366; S. C., 7 U. C. L. J. 73.) It is for reasons such as these that the power to assess under this section is restricted to debts falling due "within the year." (See *Clapp* v. *The Corporation of The Township of Thurlow*, 10 U. C. C. P. 533.) The result appears to be, that no Municipal Council has power, without the consent of the electors, to authorize the expenditure of money for purposes not falling under the head of ordinary expenditure, without having the money in hand to meet the demand, and without making provision, by rate or otherwise, to raise the required amount to meet the demand when due. (*McMaster* v. *The Corporation of Newmarket*, 11 U. C. C. P. 398; S. C., 8 U. C. L. J. 44.) The policy of the law appears to be, that all debts, where there is not money in hand to meet them, should be met by a rate in *anticipation*, or that otherwise the amount should be raised by rate within the current year. By the observance of this policy, abuses may be prevented; but by the neglect of it, abuses will assuredly arise. If there were no such policy to be observed, Council after Council might allow arrears of debts to accumulate year after year, so as to bind future Councils and to burthen future rate-payers. If this were permitted, there would be no check upon the extravagance of municipal councillors. The Legislature, in order to protect the interests of the rate-payers of the several Municipalities against abuse of the powers entrusted to the Municipal Councils, and which have authority for many purposes to bind them, have provided certain restrictions and limitations upon their powers. It is for those who contract with the Municipal Councils to see for themselves that the powers given are exercised with a due regard to such restrictions and limitations. If they neglect this, they have their own want of caution to thank for any inconvenience or loss they may suffer in consequence, and they certainly should not expect that such neglect should operate in their favor, and furnish an argument for disregarding those wise provisions of law which are designed to protect rate-payers from reckless or unauthorized expenditure or incurring of debts by Municipal Councils. (See *Mellish* v. *The Town Council of Brantford*, 2 U. C. C. P. 35; *Scott et al.* v. *The Corporation of the Town of Peterborough*, 19 U. C. Q. B. 469; *Wright* v. *The Corporation of the County of Grey*, 12 U. C. C. P. 479; *Cross* v. *The Corporation of the City of Ottawa*, 23 U. C. Q. B. 288.) It has therefore been held, that a Municipal Corporation, sued for work done, may plead that the cause of action arose for and concerning a debt incurred and falling due in a previous year, which was not within the ordinary expenditure of the Corporation for that year, and for which no rate was by by-law imposed. (*Ib.*)

(*l*) This limitation as to the amount of rate is new and important.

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aggregate amount of the rates necessary for the payment of the current annual expenses of the Municipality, and the interest and principal of the debts contracted by such Municipality at the time of the passing of this Act shall exceed the said aggregate rate of two cents in the dollar on the actual value of such ratable property, the Council of such Municipality shall levy such further rates as may be necessary to discharge obligations already incurred, but shall contract no further debts until the annual rates required to be levied within such Municipality are reduced within the aggregate rate aforesaid. (*m*)

Aggregate rate limited.

If such aggregate be not sufficient to pay debts payable within the year.

BY-LAWS TO CREATE DEBTS, &c.

226. Every such Council (*n*) may, under the formalities required by law, (*o*) pass By-laws for contracting debts by borrowing money or otherwise, (*p*) and for levying rates for payment of such debts on the rateable property of the municipality, for any purpose within the jurisdiction of the Council, (*q*) but no such By-law shall be valid which is not in accordance with the following restrictions and provisions. (*r*)

By-laws for creating debt.

The rates in some Municipalities were, before the passing of this act, so rapidly increasing as to cause alarm among the rate-payers, and seriously diminish the value of property and so threaten to impoverish the rate-payers. The remedy applied is that of limiting the aggregate annual taxation to "two cents in the dollar on the actual value, exclusive of school rates.' If an attempt were made to exceed the restriction, no doubt the Court of Chancery would, upon a proper case being made out, interfere by injunction. (See *The Edinburgh Life Insurance Company* v. *The Municipality of the Town of St. Catharines*, 10 Grant 379.)

(*m*) The Legislature of course does not intend to interfere with the obligation to pay debts already created. In Municipalities where the limit specified, of two cents in the dollar of actual value, is not enough to defray ordinary expenditure and interest and principal of debts contracted at the time of the passing of the act, power is given to levy "such further rates as may be necessary, &c." But no further debts are to be contracted until the annual rates required to be levied are reduced "within the aggregate rate aforesaid," *i. e.*, two cents in the dollar on actual value.

(*n*) *Such Council, i.e.*, the Council of every Township and the Council of every County, and of every Provisional Corporation, and of every City, and of every Town, and of every Incorporated Village. (Sec. 225.)

(*o*) See note *c* to sec. 214.

(*p*) *Or otherwise, i.e.*, "otherwise contracting a debt."

(*q*) See note *k* to sec. 225.

(*r*) The Council *may* under the formalities required by law, pass by-laws, &c.; but no such by-laws *shall* be valid unless in accordance

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Terms of. When to take effect.

1. The By-law, if not creating a debt for the purchase of public works, (*s*) shall name a day in the financial year in which the same is passed, when the By-law shall take effect.(*t*)

When debt to be redeemed. If for Gas works, &c.

2. If not contracted for gas or water works, or for the purchase of public works, according to the Statutes relating thereto, the whole of the debt and the obligations to be issued therefor shall be made payable in twenty years at furthest from the day on which such By-law takes effect; and if the debt is contracted for gas or water works, the same shall in like manner be paid in thirty years at furthest, from the day on which the By-law takes effect; (*u*)

To provide a yearly rate

3. The By-law shall settle an equal special rate per annum, in addition to all other rates, to be levied in each year for paying the debt and interest; (*v*)

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with the restrictions and provisions of this section. The former relates to the power, the latter to the mode or form in which it is to be exercised. If no power, the by-law will of course be invalid: but even if power, if exercised otherwise than in accordance with the provisions of this section, it will be also invalid.

(*s*) As to by-laws for the purchase of public works, see sec. 229, *et seq.*

(*t*) It seems that the Legislature intend that in the body of every by-law shall be stated a day on which the same is to take effect. The date on which a by-law is to take effect, does not necessarily form a part thereof, though it may be the practice for some officer of the Corporation to mark the day of its passing on it. The Legislature, however, meant that it should not be necessary to refer to anything extrinsic to the by-law for the purpose of learning when it would or had come into operation. The purchaser of a debenture for instance would require to see that it and the by-law under which it was issued was legal, and might on that account require to see when the by-law took effect (per Draper, C.J., in *In re Michie and the Corporation of the City of Toronto*, 11 U. C. C. P. 384.)

(*u*) The power to contract a debt payable at a future period, and to secure its payment at that period by the rate-payers then living, is founded on the principle that the object for which the debt is contracted is one which will benefit future rate-payers as well as those living at the time the debt is contracted. This is quite consistent with the policy of municipal law, as explained in note *k* to sec. 225.

(*v*) The By-law is to "settle" the rate and not leave it to a municipal officer to be computed (see *The Canada Company* v. *The Municipal Council of the County of Middlesex*, 10 U. C. Q. B. 93); and when so settled it is to be a special rate (*Mellish* v. *The Town Council of the Town of Brantford*, 2 U. C. C. P. 35) and not only so, but "an *equal* special rate *per annum*," that is, the rate is to be equal in each succeeding year—not fluctuating according to the arbitrary discretion of the Municipality. (*In re Sells and the Municipality of the Village of St. Thomas*, 3 U. C. C. P. 286.)

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4. Such special rate shall be sufficient, according to the amount of ratable property appearing by the last revised assessment rolls, to discharge the debt and interest when respectively payable; (*w*) To be sufficient in amount.

5. The amount of ratable property shall be ascertained irrespective of any future increase of the ratable property of the municipality, and of any income in the nature of tolls, interest or dividends, from the work, or from any stock, share or interest in the work, upon which the money to be so raised or any part thereof is intended to be invested, and also irrespective of any income from the temporary investment of the sinking fund or of any part thereof; (*x*) Irrespective of future increase of ratable property.

6. The By-law shall recite: (1.) The amount of the debt which such new By-law is intended to create, and, in some brief and general terms, the object for which it is to be created; (2.) The total amount required by this Act to be raised annually by special rate for paying the new debt and interest; (3.) The amount of the whole ratable property of the municipality according to the last revised, or revised and equalized assessment rolls; (4.) The amount of the existing debt of the municipality, showing the interest and principal separately and how much (if any) interest is in arrears; and, (5.) The annual special rate in the dollar for paying the interest and creating an equal yearly sinking fund for paying the principal of the new debt, according to this Act. (*y*)

Recitals in: amount and object of debt. The yearly rate for the debt.

The value of the ratable property.

The yearly rate for Sinking Fund and interest.

(*w*) It does not appear to be necessary that the By-law should set forth the *estimates* on which it is founded. (*Fletcher* v. *The Municipality of Euphrasia*, 13 U. C. Q. B. 129.) The Court will intend that proper estimates have been made, in the absence of evidence that they are wanting. (*Ib.*) If the rate is demonstrated to be insufficient, the by-law may be quashed. (*Perry* v. *The Town Council of the Town of Whitby*, 13 U. C. Q. B. 564.) It has been held that Municipal Councils cannot by by-law borrow money at a rate of interest exceeding six per cent. (*Wilson and the Municipal Council of the County of Elgin*, 13 U. C. Q. B. 218.)

(*x*) It does not appear to be necessary that the by-law should state the rate to be calculated at so much in the dollar on the *actual* value of the ratable property of the Municipality. (*Tylee* v. *The Municipality of Waterloo*, 9 U. C. Q B. 572.) In the absence of anything to the contrary, the Court will intend that the Council has acted according to law. (*Ib.*)

(*y*) The by-law should describe the debts and their amounts. (See *The Canada Company* v. *The Municipal Council of the County of Middlesex*, 10 U. C. Q. B. 93; *Ex parte Hayes and the City of Toronto*, 7 U. C. C. P. 255.) These may be shown in the recitals of the by-law. Where a by-law recited that the amount of the whole ratable property of the township, according to the last assessment returns, was £114,756; and

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227. Every By-law, (except for drainage as provided for under the two hundred and eighty-second section of this Act),

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that it would require the annual rate of 2½*d.* in the pound, as a special rate for payment, &c.; and then enacted that a special rate of 2½*d.* should be levied to pay the principal and interest of the loan to be raised under the by-law, and that the proceeds of such special rates should be applied solely to the payment, &c., until the same be fully paid and satisfied: *Held*, that the recital as to the amount of ratable property and the assessment returns sufficiently appeared, and that it sufficiently appeared that the amount was to be raised in each year. (*In re Cameron and the Municipality of East Nissouri*, 13 U.C. Q. B. 190.) In one part of the by-law the Reeve was empowered to issue debentures for such sums as should be from time to time required for the purposes mentioned, but not to exceed in the whole £10,000. In subsequent clauses a special rate was imposed to pay "the said sum of £10,000," and the application of "the said sum of £10,000" was pointed out. The debentures were directed to be made payable "within twenty years of the time that this by-law shall come into operation." *Held*, that the amount of the loan, and the time when the debentures were to be made payable, was stated with sufficient certainty. (*Ib.*) Where a by-law provided that the site of an old town-hall should be disposed of, and any money above the proceeds of the hall required for the erection of a new one, should be levied on the ratable property in the Municipality, but did not fix the amount or the rate to be levied, this part of the by-law was held bad. (*In re Hawke and the Municipality of Wellesley*, 13 U. C. Q. B. 636.) When errors in computation only are shown in a by-law, though extensive, the Court will lean strongly to support it, especially when it has been acted upon. (*Grierson and the Municipality of Ontario*, 9 U.C. Q. B. 623; *Secord and the Corporation of Lincoln*, 24 U. C. Q. B. 142.) Not only the rate must be mentioned in the by-law, but the amount to be raised thereby (See *Tylee and the Municipality of Waterloo*, 9 U. C. Q. B. 572), and also the purpose or object for which it is required. (*Ib.*) Thus, "to pay off two debentures held by William Allan, for erecting the court-house in said district" (*Ib.* p. 588), or "for the purpose of liquidating the sum of £1,500 due to the Gore Bank, and the sum of £500 due by the District to Alexander Drysdale, Esquire." (*Ib.*) Besides, the by-law must recite the amount of the whole ratable property of the Municipality, according to the last revised or revised and equalized assessment rolls. (See *McCormick* v. *Oakley*, 17 U. C. Q. B. 345.) Unless the recital of the ratable property of the Municipality as to amount be made out to be clearly erroneous, the Court will not on this ground quash the by-law. (*In re Paffard and the Corporation of the County of Lincoln*, 24 U. C. Q. B. 16.)

The following is a general form of by-law, prepared by the editor, to meet the requirements of this section:

No. —.

"*A By-Law to raise by way of Loan the sum of* ——, *for the purposes therein mentioned.*"

Whereas the Municipal Council of the —— of —— (*name county, city, town or incorporated village, &c.*) have (*here recite in brief and general terms the object for which the loan is required, as*, "have resolved to make a plank road from," &c.) and to carry into effect the said recited

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for raising upon the credit of the municipality any money not required for its ordinary expenditure, and not payable within

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object, it will be necessary for the said Municipal Council to raise the sum of —— in the manner hereinafter mentioned.

And whereas it will require the sum of —— to be raised annually by special rate for the payment of the said loan (*or* debt and interest), as also hereinafter mentioned.

And whereas the amount of the whole ratable property of the said Municipality, irrespective of any future increase of the same (*and where the money to be raised, or any part thereof, is intended to be invested in any work*, "and irrespective of any income in the nature of tolls, interest or dividends, from the said work," *or* "from any stock, shares or interest in the said work," &c.,) and also irrespective of any income to be derived from the temporary investment of the sinking fund hereinafter mentioned, or any part thereof, according to the last revised (*or* revised and equalized) assessment roll of the said Municipality, being for the year one thousand eight hundred and ——, was —— dollars.

And whereas the amount of the existing debt of the said Municipality is as follows: Principal, the sum of $——; and interest, the sum of $——; making in the aggregate the sum of $—— ; of which interest the sum of $—— is in arrear. (*This recital is new, and now required for the first time.*)

And whereas for paying the interest and creating an equal yearly sinking fund for paying the said sum of —— and interest, as hereinafter mentioned, it will require an equal annual special rate of —— cents in the dollar, in addition to all rates to be levied in each year.

Be it therefore enacted by the Municipal Council of the —— of —— (*as before*).

1. That it shall be lawful for the Reeve (*or other head of the Municipality, describing him by his name of office*) to raise by way of loan from any person or persons, body or bodies corporate, who may be willing to advance the same upon the credit of the debentures hereinafter mentioned, a sum of money not exceeding in the whole the sum of ——, and to cause the same to be paid into the hands of the Treasurer (*or* Chamberlain, *as the case may be*) for the purpose and with the object above recited.

2. That it shall be lawful for the said Reeve (*or as before*) to cause any number of debentures to be made for such sums of money as may be required, not less than one hundred dollars each (*or if in aid, &c., of a railway*, "not less than twenty dollars" each), and that the said debentures shall be sealed with the seal of the said Municipal Council, and be signed by the said Reeve (*or by some other person, naming him, authorized by law to sign the same*).

3. That the said debentures shall be made payable in twenty (*or if the debt be contracted for gas or water works*, "thirty") years at furthest from the day hereinafter mentioned for this by-law to take effect, at the office of the Treasurer (*or* Chamberlain, *as the case may be, or elsewhere if thought fit*) of the said Municipality, and shall have attached to them coupons for the payment of interest.

4. That the said debentures shall bear interest at and after the rate of six per cent. per annum, from the date thereof; which interest shall be payable on the (*naming days, yearly, half-yearly or quarterly, as the*

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To be assented to by the rate-payers.

Exception for drainage.

the same municipal year, (*a*) shall, before the final passing thereof, receive the assent of the electors of the municipality in the manner provided for in the one hundred and ninety-sixth section of this Act; (*b*) except that in counties (other than cities) the Council of such county or counties may raise by By-law or By-laws, without submitting the same for the assent of the electors of such county or counties, for contracting debts or loans, any sum or sums, over and above the sums required for its ordinary expenditure not exceeding in any one year twenty thousand dollars. (*c*)

Exception as to Counties other than Cities.

Course of proceeding by County Councils.

228. Provided that no such By-law of a County Council for contracting any such debt or loan for an amount, over and above the sums required for its ordinary expenditure, not exceeding in any one year twenty thousand dollars, shall be valid, (*d*) unless the same is passed at a meeting of the Council especially called for the purpose of considering the same, and held not less than three months after a copy of such By-law at length as the same is ultimately passed, together with

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case may be) at the office of the Treasurer aforesaid (*or elsewhere, as the Council may see fit*).

5. That for the purpose of forming a sinking fund for the payment of the said debentures, and the interest at the rate aforesaid to become due thereon, an equal special rate of — cents in the dollar shall, in addition to all other rates, be raised, levied and collected in each year, upon all the ratable property in the said Municipality, during the continuance of the said debentures or any of them.

6. That this By-law shall take effect and come into operation upon the —— day of —— (*this day to be a day within the financial year in which the By-law is passed, and to be fixed at the time of the passing thereof, unless the debt to be created be for the purchase of public works.*)

(*a*) See note *k* to sec. 225.

(*b*) The by-laws intended must receive the assent of the electors of the Municipality, in default of which the by-laws themselves would be invalid.

(*c*) The *rule* is that every by-law for raising money shall, before the final passing thereof, receive the assent of the electors. The *exceptions* are, first, by-laws requiring money for ordinary expenditure; secondly, by-laws raising money to be paid in the municipal year in which raised; and, thirdly, by-laws of counties contracting debts or loans not exceeding in any one year twenty thousand dollars.

(*d*) There is some obscurity in these sections. The meaning seems to be that in addition to the sums required for the ordinary expenditure of the year, a County Council may raise, in the form prescribed, a sum not exceeding twenty thousand dollars without a public vote, but that for any additional amount beyond that sum, the sanction of a vote is necessary. (See sec. 196.)

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a notice of the day appointed for such meeting, (*e*) has been published in some newspaper issued weekly or oftener within the county, or if there be no such public newspaper, then in a public newspaper published nearest to the county; (*f*) which said notice may be to the effect following: (*g*)

FORM OF NOTICE.

"The above is a true copy of a proposed By-law to be taken into consideration by the municipality of the county (*or* united counties) of —— at —— in the said county, (*or* united counties) on the —— day of ——, 18—, at the hour of —— o'clock in the —— noon, at which time and place the members of the Council are hereby required to attend for the purpose aforesaid. Form of notice.

"G. H.
"Clerk."

PURCHASE OF PUBLIC WORKS.

229. 1. Any Council may contract a debt to Her Majesty, in the purchase of any of the Public Roads, Harbours, Bridges, Buildings, or other public works in Upper Canada; and may execute such bonds, deeds, covenants and other securities to Her Majesty, as the Council may deem fit, for the payment of the price of any such public work already sold or transferred, or which may be sold or transferred, or agreed to be sold or transferred to such Municipal Corporation, and for securing the performance and observance of all or any of the conditions of sale or transfer; and may also pass all necessary By-laws for any of the purposes aforesaid; and all such by-laws, debts, bonds, deeds, covenants and other securities shall be valid, although no special or other rate per annum has been settled or imposed to be levied in each year, as provided by the three last preceding sections of this Act: Municipal Councils may purchase Public Works, and contract debts without imposing a yearly rate as provided in the three last sections.

(*e*) The by-law is to be published at length, "as the same is ultimately passed." Hence if, between publication and passing, a material alteration is made in the by-law, the by-law will be invalid. (*In re Bryant and the Municipality of Pittsburgh*, 13 U. C. Q. B. 347.) But it does not follow that on this ground alone the Court would necessarily quash the by-law. (*Boulton and the Town Council of the Town of Peterborough*, 16 U. C. Q. B. 380.)

(*f*) The by-law should of course be published in a newspaper as directed. (See *In re Simpson and the Corporation of the County of Lincoln*, 13 U. C. C. P. 48; *Paffard and the Corporation of the County of Lincoln*, 24 U. C. Q. B. 16.) But notwithstanding omission to follow the directions of the statute, the Court may decline to quash the by-law. (*Boulton and the Town Council of the Town of Peterborough*, 16 U.C. Q. B. 380.)

(*g*) See note *a* to sec. 202.

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Rates may be imposed for the payment of debts contracted with the Crown for such Works.

2. But any Council may in any By-law to be passed for the creation of any such debt, or for the executing any such bonds, deeds, covenants or other securities as aforesaid, to Her Majesty, or in any other By-law to be passed by the Council, settle and impose a special rate per annum, of such amount as the Council may deem expedient, in addition to all other rates whatsoever, to be levied in each year upon the assessed ratable property within the Municipality, for the payment and discharge of such debts, bonds, deeds, covenants or other securities, or some part thereof; and the By-law shall be valid, although the rate settled or imposed thereby be less than is required by the said sections last mentioned; and the said sections shall, so far as applicable, apply and extend to every such By-law, and the moneys raised or to be raised thereby, as fully in every respect as such provisions would extend or apply to any By-law enacted by any Council for the creation of any debt as provided in the said sections, or to the moneys raised or to be raised thereby; *(h)*

(h) The statute 12 Vic. cap. 5, sec. 12, authorized the Governor-in-Council to contract with any Municipal Council or other local Corporation, for the transfer to them of any of the public roads, harbours, bridges, &c., which it might be more convenient to place under the management of such local authorities.

By statute 14 & 15 Vic. cap. 124, any Municipal Corporation in Upper Canada might contract a debt to Her Majesty in the purchase of any roads, &c., and the Municipality might enter into, make or execute all or any bonds, deeds, covenants or other securities to Her Majesty, which such Municipality might deem fit, for the payment of the amount of purchase money of any such work, and for securing the performance of any conditions of sale; and might also pass all by-laws for any of the purposes; and such by-laws, debts, bonds, deeds covenants or other securities were to be binding and valid on such Municipality to all intents and purposes, though no special or other rate per annum should be settled or imposed, to be levied as provided under the 177th section of the Municipal Corporations Act of 1849. But by section 2, the Corporation was nevertheless authorized, in any by-law for the creation of such debt, or for making or executing any such bonds, deeds or other securities, as aforesaid, to Her Majesty, or in any other by-law by the Corporation, to impose a special rate per annum of such amount as the Municipality might deem expedient, for payment and discharge of such debts, bonds, covenants or other securities, or some part thereof: and every such by-law should be valid and binding on the Corporation, though the rate settled or imposed should be less than was required by the 177th section of the Municipal Corporations Act for 1849; and all provisions of that act (except in so far as they were inconsistent with the act then being passed) were to apply and extend to every such by-law, and the moneys to be raised thereby, as fully as they would extend to any by-law enacted by any such Municipality for the creation of any debt or raising any loan, as provided in said 177th section, and to the moneys thereby raised.

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3. The Council of any Municipal Corporation purchasing any claim under the Act respecting the sale and purchase of claims due to Government for moneys advanced to public works, may raise by assessment the sum necessary to pay the consideration agreed upon. (*i*)

Purchase of claims due to Government

HOW ACCOUNTS OF DEBTS AND RATES TO BE KEPT.

230. The Council of every County, Provisional Corporation, Township, City, Town and Incorporated Village, shall keep in its books two separate Accounts, one for the Special Rate, and one for the Sinking Fund, of every debt, to be both distinguished from all other accounts in the books by some prefix designating the purpose for which the debt was con-

Two special accounts to be kept; 1, of the special rates; 2, of the Sinking Fund.

By statute 16 Vic. cap. 181, sec. 39, it was enacted that none of the provisions of the 4th or 16th sections of the Municipal Corporations Amendment Act of 1851, should affect or apply to any by-law passed or to be passed by any Municipality in Upper Canada for any of the purposes mentioned in 14 & 15 Vic. cap. 124, or to any debts, bonds, deeds, covenants or other securities contracted, made or executed to Her Majesty, under the provisions of that act, or for any of the purposes therein mentioned.

By statute 18 Vic. cap. 133, it was enacted, in effect, that no by-law to be passed for raising money upon the credit of any City, Town, Township or Village Corporation, should have force or effect until the approval of the Municipal electors should have been obtained.

All these provisions were repealed by the Municipal Institutions Act of 1858; and sec. 226 of Con. Stat. U. C. cap. 54 (of which the sections here annotated is a re-enactment), was in effect substituted for them.

The fair result would seem to be that none of the three sections (226, 227 & 228) relating to by-laws creating debts, extend to by-laws made for the purchase of public works, except in the manner and to the extent pointed out in the second paragraph of the section here annotated, and that such by-laws would, at all events if passed by a County, be valid, although not containing any special rate, and although not assented to by the rate-payers. (See *In re O'Neill and the Corporation of the United Counties of York and Peel*, 15 U. C. C. P. 249.)

(*i*) The Governments of Upper Canada and of Canada, having at divers times before 1850, under the authority of the Legislature of Upper Canada, advanced or paid sums of money to or for companies incorporated for the purpose of constructing canals, railroads, harbours, roads and other works and improvements of a public nature in Upper Canada; and such sums or part thereof, or the interest thereof or part thereof, in the year 1850, remaining unpaid, an act was passed authorizing the Provincial Government to dispose of such claims (13 & 14 Vic. cap. 71, now Con. Stat. U. C. cap. 7), and it is to the purchase of these claims by Municipal Corporations that this third paragraph is directed. It simply authorizes the Municipal Corporation purchasing any such claim to raise by assessment the sum necessary to pay the consideration agreed upon.

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tracted, and shall keep the said accounts, with any others that are necessary, so as to exhibit at all times the state of every debt, and the amount of moneys raised, obtained and appropriated for payment thereof. (*j*)

When surplus to be carried to the Sinking fund Account.

231. If, after paying the interest of a debt and appropriating the necessary sum to the Sinking Fund of such debt for any financial year, (*k*) there is a surplus at the credit of the Special Rate Account of such debt, (*l*) such surplus shall so remain, and may be applied, if necessary towards the next year's interest; but if such surplus exceeds the amount of next year's interest, the excess shall be carried to the credit of the Sinking Fund Account of such debt. (*m*)

HOW SURPLUS TO BE INVESTED.

How surplus to be disposed of.

232. Every such Council shall from time to time, invest in Government securities, or otherwise, as the Governor in Council may direct, such part of the produce of the special rate levied in respect of any debt and at the credit of the Sinking Fund Account, or of the Special Rate Account thereof as cannot be immediately applied towards paying the debt

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(*j*) In this section there is a subject and an object. The subject is accounts, and the object is that such accounts shall be so kept "as to exhibit at all times the state of every debt, and the amount of money raised, obtained and appropriated for payment thereof." Two accounts are mentioned—the Special Rate account, and the Sinking Fund account. The amount of all rates collected and received by the Treasurer will appear in the first, and from it be transferred to the second all such sums as form portions of the sinking fund or fund accumulated for the payment of principal. The first or Special Rate account will constitute the Interest account as well as the general account, and the sums required for interest will be retained therein until disbursed, and then be charged thereto. The sums transferred on account of principal to the second or Sinking Fund account, will of course be also charged against the first or Special Rate account, and when transferred be credited to the second or Sinking Fund account. It is unnecessary to remark upon the great importance of the accounts being kept with the greatest care and accuracy.

(*k*) *Year*, as mentioned in last note.

(*l*) A surplus beyond the interest may arise from the increase of ratable property, &c.; for when a by-law creating a debt, &c., is passed, the ratable property is ascertained, *irrespective of any future increase*, &c. (See sub-sec. 5 to sec. 226.)

(*m*) If the surplus of the special rate account in any year exceeds the payment of the ordinary calls upon it, together with the next year's interest, the excess may be transferred to the sinking fund account, that is, applied towards the liquidation of principal. Provision is by the next section made for the investment of the excess. (Sec. 232.)

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by the reason of no part thereof being yet payable, (*n*) and the Council shall apply all interest or dividends received upon such investments to the same purpose as this Act directs the amount levied by the Special Rate to be applied, (*o*) but the Governor in Council may, by order, direct, that such part of the produce of the Special Rate levied, and at the credit of the Sinking Fund Account or of the Special Rate Account as aforesaid, instead of being so invested as aforesaid, shall, from time to time as the same shall accrue, be applied to the payment or redemption, at such value, not exceeding par, as the said Council can agree for, of any part of such debt or of any of the debentures representing or constituting such debt, or any part of it, though not then payable, to be selected as provided in such order, and the Municipal Council shall thereupon apply and continue to apply such part of the produce of the Special Rate at the credit of the Sinking Fund or Special Rate Accounts, as directed by such order. (*p*)

Investment how to be made.

Application of moneys with consent of Governor in Council.

APPROPRIATION OF SURPLUS.

232. Every such Council may appropriate to the payment of any debt the surplus income derived from any public or corporation work, or from any share or interest therein, after paying the annual expenses thereof, or any unappropriated money in the Treasury, or any money raised by additional rate; and any money so appropriated shall be carried to the credit of the Sinking Fund of the debt. (*q*)

Council may apply other funds towards such debts.

WHEN BY-LAWS CREATING DEBTS REPEALABLE.

234. When part only of a sum of money provided for by a By-law has been raised, the Council may repeal the By-law as to any part of the residue and as to a proportionate part of

When part only of a debt has been in-

(*n*) See last note.

(*o*) This provides for the safe keeping of the funds accruing, more especially to the sinking fund account, which may be required to accumulate for twenty or thirty years. (Sec. 2 of sub-sec. 226.)

(*p*) The latter part of this section was, in 1859, added in committee of the Legislative Council. If acted upon, it would prevent the accumulation of moneys to the sinking fund account, but would extinguish the principal of the debt to the same extent that it would otherwise increase.

(*q*) And probably create a surplus in the sinking fund account inasmuch as when a by-law creating a debt, &c., is passed, the ratable property of the municipality is ascertained, irrespective of any income in the nature of tolls, interest or dividend from the work upon which the money to be raised or any part thereof is to be invested. (Sec. 226, sub-sec. 5.)

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curred the By-law may be repealed *pro tanto.*

the Special Rate imposed therefor, provided the repealing By-law recites the facts on which it is founded, and is appointed to take effect on the thirty-first day of December in the year of its passing, and does not effect any rates due, or penalties incurred before that day, and provided the By-law is first approved by the Governor in Council. (*r*)

By-laws not repealable and appropriations not recoverable till debt paid.

235. After a debt has been contracted, the Council shall not, until the debt and interest have been paid, repeal the By-law under which the debt was contracted, or any By-law for paying the debt or the interest thereon, or for providing therefor a rate or additional rate, or appropriating thereto the surplus income of any work or of any stock or interest therein or money from any other source; and the Council shall not alter a By-law providing any such rate so as to diminish the amount to be levied under the By-law, except in the cases herein authorized, (*s*) and shall not apply to any other purpose any money in the corporation treasury which, not having been previously otherwise appropriated by any By-law or Resolution, has been directed to be applied to such payment. (*t*)

(*r*) The meaning of this section is obvious, and it may be acted upon quite consistently with the rights of creditors. (See note *m* to sec. 207.) It is an erroneous impression, when once a Municipal Council has determined to contract a loan, in order to aid, for example, in advancing a public work, that the whole matter of the by-law passed for that object is entirely out of their control, and not merely such parts of it as are necessary for securing those who have advanced money under its provisions. (*In re Hill and the Municipal Council of Walsingham*, 9 U. C. Q. B. 310.) No by-law passed under this section can take effect,

1. Unless it recite the facts on which it is founded.
2. Unless it be appointed to take effect on the 31st December in the year of its passing.
3. Unless it be approved by the Governor in Council.
4. Nor if it affect any rates due, or penalties incurred, before the day it takes effect.

(*s*) The provisions of this section are necessary for the security of creditors. (See note *m* to sec. 207.) It is enacted, first, that no Council shall either repeal a by-law under which a debt is contracted, or, secondly, alter a by-law providing the rate so as to diminish the amount to be levied under the by-law, &c. The by-law, however, may, under certain circumstances, be in part repealed, pursuant to sec. 234; so the rate may, under certain circumstances, be reduced, pursuant to secs. 236 & 237.

(*t*) This requires the sinking fund to be left untouched, and prohibits the Council withdrawing any money transferred thereto, or otherwise applying any funds that have been appropriated thereto.

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WHEN SPECIAL RATE MAY BE REDUCED.

When the rate imposed by By-law may be reduced by By-law.

236. In case in any particular year, one or more of the following sources of revenue, namely: 1. The sum raised by the special rate imposed for the payment of a debt, and collected for any particular year; and 2. The sum on hand from previous years; and 3. Any sum derived for such particular year from the surplus income of any work, or of any share or interest therein applicable to the Sinking Fund of the debt; and 4. Any sum derived from the temporary investment of the Sinking Fund of the debt, or of any part of it, and carried to the credit of the Special Rate and Sinking Fund Accounts respectively, amount to more than the annual sum required to be raised as a special rate to pay the interest, and the instalment of the debt for the particular year, and leave a surplus to the credit of such accounts, or either of them, then the Council may pass a By-law reducing the total amount to be levied under the original By-law for the following year to a sum not less than the difference between such last-mentioned surplus and the annual sum which the original By-law named and required to be raised as a special rate. (*u*)

(*u*) Having discovered the existence of a surplus arising from the sources mentioned in the section, the Council should, first, ascertain the precise amount of the surplus; secondly, ascertain the total amount to be levied for the then next following year; thirdly, deduct the one from the other; and, fourthly, take credit for the result, and reduce the original rate so as to yield no more than what is necessary after taking such credit.

To ascertain the surplus, it is apprehended that the interest and fee fund appropriation of the current year, as well as an amount equal to the interest of the year following, ought to be deducted from the amount at the credit of the special rate account. In the event of there being a surplus in any year after paying interest and appropriating the necessary sum to the sinking fund, sec. 231 requires such surplus to remain in the special rate account, to be applied if necessaary towards the next year's interest. If the surplus exceed the following year's interest, the excess may be transferred to the sinking fund account, in reduction of principal; if not so transferred, the excess may be disposed of under the section here annotated. It is in this way only that the two sections can be reconciled, and if not so read, they appear to be irreconcilable. In any event it would appear to be necessary, before dealing with the surplus, to see not only that there is enough at the credit of the special rate account to meet the interest and sinking fund appropriation of the current year, but the interest of the year following. If after such calculation enough is found for the two years and to spare, the excess may be either transferred under sec. 231 to the sinking fund, or be dealt with under the section here annotated—that is, looked upon as so much collected in anticipation of the requirements of the year following, leaving the

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Recitals requisite in such By-law.

237. But the By-law shall not be valid unless it recites:

1. The amount of the special rate imposed by the original By-law; (*a*)

2. The balance of such rate for the particular year or on hand from former years; (*b*)

3. The surplus income of the work, share or interest therein received for such year; (*c*) and

4. The amount derived for such year from any temporary investment of the Sinking Fund—(*d*)

Reduced rate to be named.

Nor unless the By-law names the reduced amount in the dollar to be levied under the original By-law—(*e*)

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balance only between it and the amount necessary, according to the original by-law, to be levied. Money once carried to the sinking fund, under sec. 231, cannot be withdrawn: it cannot be looked upon as so much in hand towards meeting the liabilities, under the by-law, for the year following.

The course, therefore, recommended is, whenever a surplus is in any year found to exist, to retain to the credit of the special rate account, besides the requirements of the year, a sum equal to the interest of the following year, and then, first, either to carry the balance to the sinking fund account, under sec. 231, or, secondly, to consider it as so much in hand for the next following year, and to reduce the rate of that year so as to make up the deficiency only.

An example may be given:—£100,000 is borrowed in 1858, payable in 1878, interest yearly at 6 per cent. In 1858, it is found with reference to the amount of ratable property in the Municipality that to meet the annual interest and appropriate an annual sum to the sinking fund account, a rate of 1d. in the £ is necessary. In 1860, owing to the increase of ratable property and other causes, after paying the interest and sinking fund appropriation of that year out of the special rate account, a surplus of £8,000 is found to exist at the credit of that account. The interest, for 1861, on £100,000, would be £6,000. Deducting this, there is still an excess of £2,000. This may be either, under sec. 231, transferred to the sinking fund account, or, under sec. 236, considered as money collected towards meeting the engagements of 1861, under the by-law. If the latter, suppose the amount necessary to be raised in 1861 to be £10,000. Here we deduct not only the £6,000 interest already reserved, but £2,000 clear surplus —leaving only £2,000, and *not* £10,000, to be raised by rate. Now, if it required 1d. to raise £10,000, it will only require one-fifth of 1d. to raise £2,000. The rate therefore may, for 1861, under this section, be reduced from 1d. to one-fifth of 1d. Such is the object and operation of the law.

(*a*) See sec. 226, sub-sec. 3.

(*b*) See note *u* to sec. 236.

(*c*) See same note.

(*d*) See same note.

(*e*) See same note.

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Nor unless the By-law be afterwards approved by the Governor in Council. (*f*) To be approved of by the Governor

ANTICIPATORY APPROPRIATIONS.

238. In case any Council desires to make an anticipatory appropriation for the next ensuing year, in lieu of the special rate for such year, in respect of any debt, (*g*) the Council may do so (*h*) by By-law, in the manner and subject to the provisions and restrictions following: Anticipatory appropriations may be made.

1. The Council may carry to the credit of the Sinking Fund account of the debt, as much as may be necessary for the purpose aforesaid; (*i*) What Funds may be so appropriated

(a) Of any money at the credit of the Special Rate account of the debt beyond the interest on such debt for the year following that in which the anticipatory appropriation is made; (*j*)

(b) And of any money raised for the purpose aforesaid by additional rate or otherwise; (*k*)

(c) And of any money derived from any temporary investment of the Sinking Fund; (*l*)

(d) And of any surplus money derived from any Corporation work, or any share or interest therein; (*m*)

(e) And of any unappropriated money in the Treasury;

Such moneys respectively not having been otherwise appropriated; (*n*)

2. The By-law making the appropriations shall distinguish the several sources of the amount, and the portions thereof to The sources to be distinguished.

(*f*) *Afterwards* approved, &c., *i. e.* after it is prepared according to the requirements of this section and before its final passing.

(*g*) This and the foregoing sections are made for the relief of the rate-payers, provided the security of the creditors be not lessened.

(*h*) *May do so.*—The doing so, or not doing so, is a matter of discretion.

(*i*) *Aforesaid*, *i. e.*, of making an anticipatory appropriation for the next ensuing year, in lieu of the special rate for such year, in respect of any debt, &c.

(*j*) Here it is clear that a year's interest in advance is to be retained as directed by sec. 231, and pointed out in note to sec. 236.

(*k*) *Purpose aforesaid.*—See note *i* above.

(*l*) The investment authorized by sec. 232.

(*m*) See sec. 236, and notes thereto.

(*n*) The right of a Municipal Council to take moneys already appropriated, and apply them to purposes different from the original appropriation, is very questionable. Though sometimes done, it ought never to be encouraged. In the case of appropriations to the Sinking Fund account of a debt, it cannot be legally done.

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be respectively applied for the interest and for the Sinking Fund appropriation of the debt for such next ensuing year; (*o*).

When sufficient the yearly rate may be suspended for the future year.

3. In case the moneys so retained at the credit of the Special Rate account, and so appropriated to the Sinking Fund account, from all or any of the sources above mentioned, are sufficient to meet the Sinking Fund appropriation and interest for the next ensuing year, the Council may then pass a By-law directing that the original rate for such next ensuing year be not levied. (*p*)

By-law must recite.

239. The By-law shall not be valid unless it recites: (*q*)

The original debt.

1. The original amount of the debt, and in brief and general terms, the object for which the debt was created; (*r*)

The amount paid.

2. The amount, if any, already paid of the debt;

The amount of Sinking Fund yearly

3. The annual amount of the Sinking Fund appropriation required in respect of such debt;

The amount in hand.

4. The total amount, then on hand, of the Sinking Fund appropriations, in respect to the debt, distinguishing the amount thereof in cash in the treasury from the amount temporarily invested;

The amount required for next year's interest.

5. The amount required to meet the interest of the debt for the year next after the making of such anticipatory appropriation; (*s*) and

And that it is reserved.

6. That the Council has retained at the credit of the Special Rate account of the debt, a sum sufficient to meet the next year's interest (*naming the amount of it*), and that the Council has carried to the credit of the Sinking Fund account a sum sufficient to meet the Sinking Fund appropriation (*naming the amount of it*) for such year; and

By-law to be approved by Governor.

7. No such By-law shall be valid unless approved by the Governor-in-Council. (*t*)

(*o*) The sources to be one or other of the foregoing.

(*p*) When the surplus, though not equal to the product of the entire rate for a year, is considerable, a by-law may be passed for the proportionable *reduction* of the rate (sec. 236); but when the surplus is sufficient to meet the Sinking Fund appropriation and interest for a year, a by-law may be passed to the effect that for that year the original rate *be not levied.*

(*q*) This section bears the same relation to sec. 238 that sec. 237 does to sec. 236. The one is for the reduction of the special rate for a year, the other for the cessation of it.

(*r*) See note *y* to sec. 226.

(*s*) See note *u* to sec. 236.

(*t*) See note *f* to sec. 237.

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240. After the dissolution of any Municipal Union, the senior Municipality may make an anticipatory appropriation for the relief of the junior Municipality, in respect of any debt secured by By-law, in the same manner as the senior Municipality might do on its own behalf. (*u*)

After the dissolution of a Union, the senior Municipality may relieve the junior by an anticipatory appropriation.

REPORT OF DEBTS TO BE MADE YEARLY.

241. Every Council shall, on or before the thirty-first day January, in each year, transmit to the Governor-General, through the Provincial Secretary, an account of the several debts of the Corporation, as they stood on the thirty-first day of December preceding, (*a*) specifying in regard to every debt of which a balance remained due at that day :

Every Council to make a yearly report of the state of the debts to the Governor &c.

1. The original amount of the debt;
2. The date when it was contracted;
3. The days fixed for its payment;
4. The interest to be paid therefor;
5. The rate provided for the redemption of the debt and interest;
6. The proceeds of such rate for the year ending on such thirty-first day of December;
7. The portion, if any, redeemed of the debt during such year;
8. The amount of interest, if any, unpaid on such last mentioned day; and
9. The balance still due of the principal of the debt.

What such report must shew.

242. The form of the account may from time to time be prescribed by the Governor-in-Council. (*b*)

The Governor may prescribe a form of account.

COMMISSIONS OF INQUIRY RESPECTING MUNICIPAL FINANCES.

243. In case one-third of the members of any Council petition for a Commission under the Great Seal, to inquire into the financial affairs of the Corporation and things con-

When a commission of inquiry may issue.

(*u*) An anticipatory appropriation in relief may, it is apprehended, be either one in reduction of the special rate for a given year (sec. 236) or for the cessation of the rate for that year (sec. 238.)

(*a*) The design of this return is to inform the Executive Government yearly of the financial position of each Municipality. The officer whose duty it may be to prepare the return is allowed one month to do so.

(*b*) It is conceived that any form prescribed cannot be better than to afford a column for each item mentioned in sec. 241.

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nected therewith, and if sufficient cause be shewn, (*c*) the Governor in Council may issue a Commission accordingly, and the Commissioner or the Commissioners, or such one or more of them as the Commission empowers to act, shall have the same power to summon witnesses, enforce their attendance, and compel them to produce documents and to give evidence as any Court has in civil cases. (*d*)

Expenses of such Commissions provided for.

244. The expense to be allowed for executing the Commission shall be determined and certified by the Minister of Finance or his Deputy, and shall become thenceforth a debt due to the Commissioner or Commissioners by the Corporation, and shall be payable within three months after demand thereof made by the Commissioner, or by any one of the Commissioners, at the office of the Treasurer of the Corporation. (*e*)

(*c*) The Commission is not to issue merely upon the petition of one-third of the members of the Council, but upon *sufficient cause shewn.*

(*d*) The power conferred is one of inquiry, and may be of great advantage to Municipalities, by enabling the Commissioners to enforce the attendance of witnesses and compel them to give evidence (per Richards, C. J., *In re Township of Eldon and Ferguson*, 6 U. C. L. J. 209). It is a public inquiry conducted under a public Act of Parliament, which says nothing about compensation of witnesses, and it would seem that persons called before the Commissioners are not entitled to compensation for expenses or loss of time any more than in the case of a prosecution for a misdemeanor (per Robinson, C. J., in *Municipality of East Nissouri* v. *Horsman et al.* 16 U. C. Q. B. 567). If it be alleged and proved that the Councillors whose duty it is to give all necessary and reasonable information, maliciously conspired to withhold information, and contrived and intended to cause expense and damage to the Corporation, by increasing the costs and expenses of the Commission, and throw upon the Corporation any costs (s. 244), and it be charged and proved that the Councillors, in pursuance of such contrivance and intention, misconducted themselves to the damage of the corporation, an action on the case may be maintained against them at the suit of the Corporation for the recovery of damages (*Ib.*); and in such an action, where it was shewn that the Clerk absented himself and kept back the books, &c., in collusion with the defendants, and that, in consequence, the costs of the commission, which otherwise would not have exceeded £75 or £100, were increased to £328, it was held that the sum of £250 damages was not excessive. (*Ib.* 18 U. C. Q. B. 81.) There is nothing in the section to prevent the Corporation from suing for money due them (per Richards, J., *In re The Corporation of the Township of Eldon and David Ferguson and Israel Ferguson*, 6 U. C. L. J. 209.) It would be unreasonable to hold that the power to inquire should deprive the Corporation of the right to resort to a more speedy and economical mode of investigating accounts, and of obtaining payment of the amount due when ascertained. (*Ib.*) Besides, there is nothing in the section preventing the Corporation referring their claim to arbitration. (*Ib.*)

(*e*) The expenses are to be *determined* by the Minister of Finance or

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PROVISIONS APPLICABLE TO ALL MUNICIPALITIES EXCEPT PROVISIONAL CORPORATIONS.

245. The following section applies to all Municipalities, (*f*) Provisional Corporations not included; (*g*) namely; Sections applicable to all except Provisional Councils.

1. Counties.
2. Townships.
3. Cities.
4. Towns.
5. Incorporated Villages.

246. The Council of every County, Township, City, Town and Incorporated Village may respectively pass By-laws: Councils may make By-laws;

OBTAINING PROPERTY.

1. For obtaining such real and personal property as may be required for the use of the Corporation, and for erecting, improving and maintaining a Hall and any other houses and buildings required by and being upon the land of the Corporation, and for disposing of such property when no longer required; (*h*) For obtaining property, real and personal, &c.

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his Deputy. No appeal of any kind is provided for. When determined, the account may be certified. When certified, the amount of it becomes a debt due by the Municipality to the Commissioner or Commissioners, payable "*within* three calendar months after demand." The intention appears to be to give three months for payment. If so, it is a debt due, but not payable until three months after demand. When it becomes a debt payable, of course it may be, like any other debt, recovered by action at law. The Corporation, under certain circumstances, may have an action to recover compensation. For such expense see note *d* to sec. 243.

(*f*) To avoid the necessity of repeating similar provisions under the head of each description of Municipality separately, the Legislature, in referring to the Municipalities to which the several sections relate, has grouped the provisions under joint heads. Any Municipality, whether of a county, city, township, town, or incorporated village, can readily find the sections in which it is interested, by observing the leading titles prefixed to groups of sections.

(*g*) These sections, it will be observed, are not made to apply to Provisional Corporations.

(*h*) The powers here conferred are to pass by-laws,

1. For obtaining such real and personal property "as may be required" for the *use* of the Corporation.
2. For erecting, improving and maintaining a Hall *and* any other Houses and buildings "required by and being upon the land of the Corporation."
3. For disposing of such property when no longer required.

The laying out upon a map of an intended town of squares or other open spaces for public recreation or amusement, or for any other public purpose, renders them as sacred to such purpose as the streets them-

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APPOINTING CERTAIN OFFICERS.

2. For appointing (*i*) such,—

(1.) Pound-keepers;	(4.) Road Surveyors;
(2.) Fence-Viewers;	(5.) Road Commissioners;
(3.) Overseers of Highways;	(6.) Valuators;

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selves (per The Chancellor in *The Municipality of the Town of Guelph* v. *The Canada Company*, 4 Grant 654) and if an alienation to a different purpose by a person pretending to have the right to alienate be attempted, the Court of Chancery will interfere by injunction to restrain it. (*Ib.*) So if the Municipal Corporation itself be a trustee of land for a public purpose and without authority attempt to alienate it, in breach of the trust for which it is held, the Court of Chancery would interfere by injunction, to restrain the alienation, or if actually made would order a reconveyance. (*Attorney General* v. *Goderich*, 5 Grant, 402.) Municipal Corporations are under certain circumstances authorized to invest surplus Clergy Reserve moneys in mortgage securities in land, (sec. 272) and in such case if default be made in the payment of the mortgage money the Corporation is entitled to a decree of foreclosure, notwithstanding the statutes of Mortmain, and is not restricted to a decree for sale of the land (*The Municipality of Orford* v. *Bailey*, 12 Grant 276) and it would also seem that a Municipal Corporation may give time to a debtor and take a mortgage on real estate to secure its payment. (See *Corporation of Belleville* v. *Judd*, 16 U. C. C. P. 397.)

The power to erect a Hall and other buildings required by the Corporation does not, it is apprehended, include a saw-mill, erected with the avowed intention of benefiting the municipality. (See *The Municipality of the Township of Kinloss* v. *Stauffer*, 15 U. C. Q. B. 414). The Court of Queen's Bench refused a rule nisi for a mandamus at the instance of the Justices of the Huron District, to compel the Municipal Council of the Huron District to build a court-house. (*Justices of the Huron District* v. *The Huron District Council*, 5 U. C. Q. B. 574). It is undecided whether, if a Municipal Council neglects to repair the steps leading to a court-house, and an individual in consequence thereof falls and loses his life, an action will lie against the Corporation, at the suit of the representatives, under Con. Stat. C. cap. 78. (*Hawkeshaw* v. *The District Council of the District of Dalhousie*, 7 U. C. Q. B. 590.) A by-law passed by the Municipal Council of Prescott and Russell, to tax the county of Russell alone, for the erection of a registry office for the use of the United Counties, was set aside. (*Smith* v. *The United Counties of Prescott and Russell*, 10 U. C. Q. B. 282.) The power to dispose of real property acquired for the use of the Corporation when no longer required is also conferred. This includes a Town Hall and the site on which it stands, when it is deemed that a new Town Hall in another situation would be more convenient for the public. (*In re Hawke and the Municipality of Wellesley*, 13 U.C. Q.B. 636.)

(*i*) It is not here expressed in what manner, that is, whether under corporate seal or otherwise, the officers in this section named are to be appointed. The bill of 1858 when introduced to the House of Assembly, had the words "under the corporate seal;" but these words were afterwards struck out in committee. It has always been a recognised

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(7.) And such other officers as are necessary in the affairs of the Corporation, or for carrying into effect the provisions of any Act of the Legislature or for the removal of such officers; (*ii*) but no member of the Corporation shall be eligible to act as Commissioner, Superintendent, or Overseer, over any work undertaken and carried on in part or in whole, at the expense of the Municipality, nor shall any member of a Corporation be a Valuator; (*j*) To appoint Officers;

3. For regulating the remuneration, fees, charges and duties of such officers, and the securities to be given for the performance of such duties; (*k*) To fix fees and securities;

AIDING AGRICULTURAL AND OTHER SOCIETIES.

4. For granting money or land in aid of the Agricultural Association of Upper Canada (*l*) or of any duly organized Agricultural (*m*) or Horticultural Society in Upper Canada, (*n*) For aiding Agricultural Societies;

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qualification of the principle which requires the use of the seal, that there are certain small matters of such frequent occurrence in the course of conducting affairs by a Corporation, that it appears to be of necessity that Corporations should be allowed to transact them without going through the formality of a sealed instrument. The hiring of servants to perform their ordinary duties has from a very early period been one of these exceptions. (*Raines* v. *The Credit Harbour Company*, 1 U. C. Q. B. 174.) Whether the officers named in this section come within the exception is, to say the least of it, doubtful. The old law required such appointments to be under corporate seal (12 Vic. cap. 81, sec. 31, subsec. 5), and the intendment of this subsection, which must be taken in connection with the general words at the commencement of this section, appears to be that the appointment should be by law.

(*ii*) There is power given to appoint, not only the officers described, but "other officers *necessary* in the affairs of the Corporation." This opens a door to abuses; but perhaps a restriction to officers named might have worked great inconvenience.

(*j*) The latter part of this subsection is new. See sec. 222 and notes thereto.

(*k*) The regulations should be by by-law. If by by-law there would be no question as to their validity in point of form. See note *n* to sec. 191.

(*l*) The Members of the Boards of Agriculture, and of the Boards of Arts and Manufactures, the Presidents and Vice-Presidents of all lawfully organized County Agricultural Societies, and of all Horticultural Societies, and all subscribers of $1 annually to the funds of any such society, are in Upper Canada the Agricultural *Association* of Upper Canada. (Con. Stat. Can. cap. 32, sec. 34.)

(*m*) An Agricultural Society may be organized in each of the electoral divisions of Upper Canada, &c. (*Ib.* sec. 45).

(*n*) Any number of persons, not less than twenty-five, may organize and form themselves into a Horticultural Society, for any city, town, township or village, in Upper Canada, &c. (*Ib.* sec. 39.)

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or of the Board of Arts and Manufactures for Upper Canada,(*o*) or of any incorporated Mechanics' Institute within the Municipality; (*p*)

CENSUS.

Local census

5. For taking a Census of the inhabitants, or of the resident Male freeholders and householders in the Municipality; (*pp*)

FINES AND PENALTIES.

Fines and penalties for neglect of duty.

6. For inflicting reasonable fines and penalties not exceeding Fifty Dollars exclusive of costs, (*q*)

(*a.*) Upon any person for the non-performance of his duties who has been elected or appointed to any Office in the Corporation, and who has accepted such Office and taken the oaths, and afterwards neglects the duties thereof (*r*) and

(*b.*) For breach of any of the By-laws of the Corporation; (*s*) and

Levying penalties by distress.

7. For collecting such penalties by distress and sale of the goods and chattels of the Offender; (*t*)

(*o*) "The Board of Arts and Manufactures for Upper Canada" is constituted and incorporated by sec. 19 *et seq.* of Con. Stat. Can., cap. 32.

(*p*) Many institutes are incorporated by special Acts of Parliament.

(*pp*) The first provision of this kind was enacted in 1858. (See 1 Vic. cap. 21, ss. 15 and 45.)

(*q*) The reasonableness or unreasonableness of the fine or penalty, so long as within fifty dollars, would appear to be in the discretion of the Municipal Council.

The 210 and 211 sections evidently contemplate that the fine or penalty as well as the term of imprisonment, shall be fixed by the by-law, and looking no further than these provisions, they indicate that the Council should determine both the one and the other. But it may be well urged that a knowledge of the circumstances of each particular case is essential for the exercise of discretion, both as to fine and imprisonment, and that this knowledge could only be obtained by the justice before whom the offender is brought, and that any determination as to the amount of fine or length of imprisonment contained in the by-law, must necessarily be made in ignorance of particular facts which would call for the exercise of discretion. (See *In re Fennell and the Corporation of the Town of Guelph*, 24 U. C. Q. B. 288.)

(*r*) Refusal to *accept* office is made penal, by sec. 186. This subsection applies rather to the case of a person who having accepted office, *neglects* the duties thereof.

(*s*) The power to make by-laws necessarily supposes the power to enforce them by pecuniary penalties, competent and proportionable to the offence. (Note *l* to sec. 190.)

(*t*) If there be no distress, imprisonment may follow. (See subsec. 8.)

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8. For inflicting reasonable punishment, by imprisonment, with or without hard labour either in a Lock-up-house in some Town or Village in the Township, or in the County Gaol or House of Correction, for any period not exceeding Twenty-one days, for breach of any of the By-laws of the Council, in case of non-payment of the fine inflicted for any such breach, and there being no distress found out of which such fine can be levied, except for breach of any By-law or By-laws in cities, and the suppression of houses of ill-fame, for which the imprisonment may be for any period, not exceeding six months, in case of the non-payment of the costs and fines inflicted and there being no sufficient distress as aforesaid. (*u*)

Imprisonment when allowed and time of.

PROVISIONS APPLICABLE TO TOWNSHIPS, CITIES, TOWNS AND INCORPORATED VILLAGES.

247. The following sections, numbered from two hundred and forty-eight to two hundred and seventy, shall apply to the following Municipalities, (*a*) namely:

What sections shall so apply.

1. Townships.
2. Cities.
3. Towns.
4. Incorporated Villages.

And sections two hundred and fifty-seven to two hundred and sixty, both inclusive, apply to all such places as are therein referred to.

Public Health.

248. The Members of every Township, City, Town, and Incorporated Village Council shall be Health Officers within their respective Municipalities, under the Consolidated Statute for Upper Canada, respecting the public health, and under any act passed after this act takes effect for the like purpose; (*b*) but any such Council may, by By-law, delegate the powers of its members as such Health Officers to a committee of their own number, or to such persons, either including or

Members of Council to be Health Officers.

(*u*) Imprisonment is not allowable in the first instance. It is only allowed in case of non-payment of the fine inflicted, and where there is no sufficient distress. When inflicted it must be reasonable, that is, be proportionate to the nature and degree of the offence. It must not, however, under any circumstances, exceed twenty-one days, except for breach of a by-law for suppression of houses of ill fame, for which the imprisonment may be for any period not exceeding six months. (See *The Queen* v. *Emily Munro*, 24 U. C. Q. B. 44.)

(*a*) See note *f* to sec. 245.

(*b*) See Con. Stats. Can. cap. 38.

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not including one or more of themselves, as the Council thinks best. (*g*)

Council and Police Commissioners may make By-laws

249. The Council of every Township, Town, and Incorporated Village, and the Commissioners of Police in Cities, may respectively pass By-laws: (*h*)

SHOP AND TAVERN LICENSES.

Touching the retailing of intoxicating liquors.

1. For granting tavern license certificates (that is, certificates to obtain licenses for the retail of spirituous, fermented, or other manufactured liquors to be drunk in the inn, ale-house, beer-house, or any other house or place of public entertainment in which the same is sold); and for granting shop licenses (that is, licenses for the retail of such liquors in quantities not less than one quart, in shops, stores, or places other than inns, ale-houses, beer-houses, or places of public entertainment); (*i*) but no license certificate shall be granted for the retail of such liquors in any tavern, inn, ale-house, beer-house, or place of public entertainment except upon petition praying for the same, and signed by at least thirty of the resident municipal electors of the municipality within which the same is to have effect, nor until the Inspector of Licenses reports that the applicant has all the accommodation required by law; (*j*) Provided that it shall not be lawful for the Council of any Municipal Corporation,

Conditions on which only tavern licenses shall be granted.

(*g*) The delegation, if made, had better be by By-law. See note *l* to sec. 190.

(*h*) It is provided by sec. 192, that "every By-law shall be under the seal of the Corporation," &c. This as to By-laws of Townships, Towns and Incorporated Villages, which are corporations, can be readily understood; but is inapplicable to By-laws of Commissioners of Police in Cities, who are not corporations. This section is, as regards tavern and shop licenses, a consolidation of Con. Stats. U. C. cap. 54, sec. 246, as amended by statutes 23 Vic. cap. 53, and 25 Vic. cap. 23.

(*i*) The word "granting," used in this sub-section, does not, so far as our municipal corporations are concerned, impose the necessity of one Council sitting with a majority of the whole number present to determine on granting or refusing a license to each applicant, and to pass a by-law or by-laws granting licenses to those whose application is acceded to. The appointment of a committee for the purpose would not appear to be illegal. (*In re Bright* v. *The City of Toronto*, 12 U. C. C. P., 433, S. C. 9 U. C. L. J. 17.) If a license or certificate be improperly granted, the remedy is not by mandamus to compel the revocation of the license or certificate. (*The Queen ex rel. Gamble* v. *Burnside*, 8 U. C. Q. B. 263.)

(*j*) This part of the section is taken from sec. 1 of Stat. 23 Vic. cap. 53.

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or the Commissioners of Police of any City, to grant licenses or license certificates for the sale of spirituous or intoxicating drinks on the days of the exhibition of the Agricultural Association of Upper Canada, or of any County, Electoral Division, or Township Agricultural Society, either on the grounds of such society or within the distance of three hundred yards from such grounds; (*k*)

Licenses not to extend to certain times and places.

2. For declaring the terms and conditions required to be complied with by an applicant for a tavern license, and the security to be given by him for observing the same; (*l*) but every tavern shall contain, in addition to what may be needed for the use of the family of the tavern-keeper, not less than four bed-rooms, with a suitable complement of bedding and furniture, and (except in cities and incorporated towns) there shall also be attached to it proper stabling for at least six horses; (*m*)

Terms on which license may be granted.

3. For declaring the security to be given by any applicant for a shop or tavern license, for observing the By-laws of the Municipality; (*n*)

Security to be given.

4. For limiting the number of tavern and shop licenses respectively; (*o*) but in no Municipality shall tavern license certificates be granted in a proportion greater than one for

Number may be limited.

(*k*) The conclusion of this sub-section is new.

(*l*) A clause in a by-law of a municipal corporation, which cancelled the license of a person convicted of a penalty for the infringement of a by-law, was held to be beyond the authority of the corporation, and a clause rendering such infringement a cancellation of the license was quashed with costs. (*In re Bright and the City of Toronto*, 12 U. C. C. P. 433; S. C. 9 U. C. L. J. 17.)

(*m*) The latter part of this sub-section is taken from sec. 3 of Stat. 23 Vic. cap. 53, and sec. 3 of 25 Vic. cap. 23.

(*n*) This is the same as was sub-section 3 of Con. Stats. U. C. cap. 54, sec. 246.

(*o*) The right of a Municipal Council to name the *persons* who are to receive licenses is doubtful. (*In re Coyne and The Municipal Council of the Township of Dunwich*, 9 U. C. Q. B. 448.) Where the power was for "limiting the number of persons to whom, and the *houses* or *places* for which such licenses should be granted," it was held that the Municipal Council might *select* the persons as well as limit the number. (*Terry* v. *The Municipality of the Township of Haldimand*, 15 U. C. Q. B. 380; and see sub-sec. 6 of this section.) A by-law passed under this sub-section, ostensibly to *limit* the number of tavern or shop licenses, but in reality granting a monopoly to one person, or in effect a prohibitory measure, would be illegal. (*In re Barclay and the Municipality of Darlington*, 12 U. C. Q. B. 86; *In re Graystock and the Municipality of Otonabee*, 12 U. C. Q. B. 458.)

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every two hundred and fifty souls resident therein, as shewn by the last census, or by a special enumeration taken by order of the Municipal Council concerned; (*p*)

Exempting a certain number from having certain accommodation.

5. For declaring that in Cities a number not exceeding ten persons, and in towns a number not exceeding four persons, qualified to have a tavern license, may be exempted from the necessity of having all the tavern accommodation required by the preceding sub-sections; (*q*)

Regulation of public houses.

6. For regulating the houses or places licensed, the time the licenses are to be in force, not exceeding one year, dating from the first day of March in each year, and the sums to be paid therefor respectively; (*r*)

Penalty for granting certificate or license contrary to this Act.

7. Any member of a corporation, officer, or person who issues a license certificate or license, contrary to the provisions of this act, shall be deemed guilty of misdemeanor, and upon conviction thereof shall, for each offence, pay a fine of not less than forty dollars nor more than one hundred dollars, one half of which shall be paid to the complainant and the other to the Municipality; or the offender or offenders may be imprisoned for a period not exceeding thirty days, or in the discretion of the Court may be both fined and imprisoned; (*s*)

8. The Council of every Municipality and the Police Commissioners in every City, shall, on or before the fifteenth day of February in each year, deliver to the Collector of

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(*p*) Taken from section 8 of Statute 25 Vic. cap. 28.

(*q*) Taken from section 4 of Statute 23 Vic. cap. 53.

(*r*) The power of a Municipal Council to grant a license for the sale of spirituous liquors to a particular house, and afterwards to prohibit the sale of spirituous liquors in such house on certain days or at certain hours has been doubted. (*Baker and The Municipal Council of Paris*, 10 U. C. Q. B. 621; but see *Bright and The City of Toronto*, 12 U. C. C. P. 433, and section 257 of this act.) The power to prohibit the sale of spirituous liquors in an inn at any time other than mentioned in the statute, has also been doubted. (*In re Barclay and the Municipality of Darlington*, 11 U.C. Q.B. 470, but see sec. 257 of this act.) The power to prohibit the sale to certain classes of people, such as minors, has been denied. (*Baker* v. *The Municipal Council of Paris*, 10 U. C. Q. B. 621.) But a by-law prohibiting the sale of spirituous liquors to idiots and insane persons has recently been held good. (*In re Ross and The Corporation of the United Counties of York and Peel*, 14 U. C. C. P. 171.)

As to the power by by-law to select the *persons* to whom licenses should be granted, see note *o*, above.

(*s*) Taken from statutes 23 Vic. cap. 53, sec. 6, and 25 Vic. cap. 23, sec. 7. As to misdemeanors see note *b* to sec. 98.

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Inland Revenue for the Revenue Division in which each Municipality is situate, a certificate signed by the Clerk and Mayor or Reeve of the Municipality, shewing the number of licenses which may be issued in such Municipality under this act; and the Collector of Inland Revenue shall not issue a greater number of licenses for any Municipality than is named in such certificate; (*t*)

Certificate of number of licenses to be furnished to collector of Inland Revenue.

PROHIBITED SALE OF SPIRITUOUS LIQUORS.

9. For prohibiting the sale by retail of spirituous, fermented or other manufactured liquors in any Inn or other House of public entertainment; and for prohibiting totally the sale thereof in shops and places other than houses of public entertainment; Provided the By-law, before the final passing thereof, has been duly approved by the Electors of the Municipality in the manner provided by this Act. (*u*)

Sale of liquors in shops or taverns may be prohibited

250. The sum to be paid for a Tavern license shall include as well the duty payable under the Imperial Statute passed in the fourteenth year of the Reign of King George the Third, intituled: *An Act to establish a fund towards defraying the charges of the administration of Justice and the support of the Civil Government within the Province of Quebec*, as a duty payable to the Province under any Act of the Parliament of this Province, and shall not be less than Twenty-five dollars, and every license so granted as aforesaid shall be held a license for the purpose of the said Imperial and Provincial Acts, and except the sum payable to the Province the sum paid for the license shall be applied to the use of the corporation. (*a*) But

The sums to be paid for licenses.

To include the Imperial and Provincial duty.

(*t*) In no municipality shall tavern license certificates be granted in a proportion greater than one for every two hundred and fifty souls resident therein. (Subsec. 4.)

(*u*) The prohibitory by-law to be valid must be "duly approved by the electors of the Municipality. Of course a majority is all that is required. But it may be argued that a majority of the whole of the electors of the Municipality and not merely a majority of those present at the meetings called for the purpose of approving or disapproving of the by-law is required. (See *McAvoy and the Municipality of Sarnia* 12 U. C. Q. B. 99.)

(*a*) For many years past the duty of £1 16s. sterling imposed by the Imperial Act 14 Geo. III. cap. 88, sec. 5, has been collected under Provincial Statutes or Municipal By-laws by the same Provincial or local authority, and has formed part of the duty paid by the applicant for the same license, which license has not for a long time past been granted by the Governor or Lieutenant Governor. By the Imperial Statute, 1 & 2 Wm. IV., the Imperial Government placed the duties imposed by the 14 Geo. III. cap. 88, entirely at the disposal of the

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Sum not to exceed $100.

no by-law by which a greater sum than one hundred dollars per annum is intended to be exacted for any Shop or Tavern license, or for leave to exercise any other calling, or to do any other thing for which a license may be required, shall have force or effect, unless the by-law before the final passing thereof has been duly approved by the electors of the municipality in the manner provided by this Act; and the By-law shall not be varied or repealed unless the by-law for that purpose has been duly approved in like manner by the electors of the Municipality. (*b*)

Unless approved by public vote, &c.

How Tavern licenses shall be issued.

251. Every Tavern license shall be issued by the Collector of Inland Revenue for the Revenue Division in which the Hotel, Tavern, House, Vessel or place to which the License is to apply shall be situate, and on the production to such Collector of Inland Revenue; in cases of Towns, Townships and Incorporated Villages, of a certificate from the Mayor and Clerk, or Reeve and Clerk, as the case may be; and in cities,

In Cities.

of a certificate from the Board of Police Commissioners, that such applicant has complied with the requirements of the Law and of the By-laws of the Municipality or regulations made in that behalf, and that the applicant is therefore entitled to such License for the time for which it is demanded of the Collector of Inland Revenue, and for the Hotel, Tavern, House, Vessel or place mentioned in such certificate, and the Provincial Duty, payable on such License, shall be paid to such Collector of Inland Revenue before he shall deliver such License, and the words "Tavern License" shall mean and include any such License as aforesaid, and no other. (*c*)

Payment of Provincial duty.

Colonial Legislature, and it is not therefore surprising that since that change was made, it was assumed that the license itself for which the duty was still to be paid, need no longer be issued by the Governor or Lieutenant Governor, but might be issued in such manner as the Colonial Legislature might appoint. This being the case it has been held that a person can be no longer legally convicted for selling liquor without a license granted by the Governor or Lieutenant Governor of the Colony, under the Imperial Act 14 Geo. III. cap. 88. (*Andrew* v. *White*, 18 U. C. Q. B. 170.)

(*b*) It was held under 16 Vic. cap. 184, sec. 4, which made £10 the maximum limit, that a by-law requiring the payment of £10 over and above the Imperial dues of £2 5s. currency, need not be approved of by the electors. (*In re Harrison and the Town Council of the Town of Owen Sound*, 16 U. C. Q. B. 166.) It was in the same case held that fees directed to be paid to the Treasurer and Inspector, were not to be considered as part of the £10 duty. (*Ib.*)

(*c*) The collector of Inland Revenue is a Colonial officer, and as such now entrusted with the duty of issuing Tavern licenses:

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252. No Tavern or Shop license shall be necessary for selling any liquors in the original packages in which the same have been received from the importer or manufacturer; (*d*) provided such packages contain respectively not less than five gallons, or one dozen bottles. (*e*)

No license required to sell in the original packages.

253. Any person having a Tavern license may, without any additional license, sell liquors by retail to be consumed out of his house, in the same quantities as if to be consumed in the house. (*f*)

Tavern keepers may sell to be consumed out of the house.

254. Every person who keeps a Tavern or other house or place of public entertainment, and has a Tavern license, shall exhibit over the door of such Tavern, House or place, in large letters, the words "licensed to sell Wine, Beer and other Spirituous or Fermented Liquors," under a penalty in default or so doing of one dollar, (*ff*) recoverable with costs before any Justice of the Peace upon the oath of one credible witness, one half of which penalty shall go to the informer and the other half to the Municipality; (*g*) but no person shall sell or barter intoxicating liquor of any kind, without the

Tavern keepers to exhibit notice of being licensed.

No one to sell &c., without license.

He is to do so on the production of a certificate signed by one or other of the officers named, showing,

1. That applicant has complied with the requirements of the law and of the by-laws of the Municipality or regulations made in that behalf.

2. That the applicant is entitled to such license for the time for which it is demanded (and for the Hotel, Tavern, House, Vessel or place mentioned in such certificate.)

The Provincial (formerly Imperial) duty is to be paid to the collector before he deliver the license. See note *a* to sec. 250.

(*d*) Whether manufactured within the Province or not.

(*e*) A tax is intended to be imposed upon those only who sell spirituous liquors, &c., by retail. To sell packages containing less than five gallons or one dozen bottles, is considered retailing.

(*f*) Notwithstanding the right to sell liquors to be consumed in the house of the vendor, the right to do so to be consumed outside of his house was at one time doubted. To remove the doubt, stat. 2 Geo. IV. cap. 8, 1st ses., was passed, and this section is a reënactment of it.

(*ff*) This section contains a duty, and a penalty for neglect of it. The duty is to exhibit over the door of every tavern, &c., licensed, the words mentioned; the penalty for neglect of it is one dollar. It is not, it seems, illegal for a Municipal Council to pass a by-law preventing persons not licensed from exhibiting the words "licensed to sell." (*Bright and the City of Toronto*, 12 U. C. C. P. 433.)

(*g*) It is presumed that when not expressly excluded, an informer would be "a credible witness," within the meaning of sec. 256 of this Act, as to the recovery of penalties.

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license therefor by law required, under a penalty of not less than twenty dollars and costs, and not over fifty dollars and costs. (*h*)

Shop licenses not to authorise sale of liquors to be consumed in the house.

255. No licensed Shop-keeper, or other person having a Shop-license shall allow any liquors sold by him and for the sale of which a license is required, to be consumed within his Shop, or within the building of which such Shop is a part, either by the purchaser thereof or by any other person not usually resident within such building under a penalty of ten dollars and costs. (*i*)

Penalties recoverable before two Justices of the Peace.

256. All prosecutions for penalties incurred by persons vending Wine, Rum, Brandy or other Spirituous Liquors, Beer, Ale, Cider, or other fermented or manufactured liquors without License, (*j*) shall be recoverable with costs before any two or more Justices of the Peace having jurisdiction in the Municipality in which the offence is committed, (*k*) upon the oath of one credible witness, one half of which penalty shall go to the informer, and the other half to the Municipalty; but in Cities and Towns having a Police Magistrate, the offence shall be tried before such Police Magistrate. (*l*)

Intoxicating liquors not to be sold in Taverns, &c., at certain times.

257. In all places where, by the laws of that part of this Province called Upper Canada, intoxicating liquors are or may be allowed to be sold by wholesale or retail, no sale or other disposal of the said liquors shall take place therein or on the premises thereof, or out of or from the same, to any person or persons whomsoever, from or after the hour of seven of the

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(*h*) The first part of the section is directed against licensed Tavern-keepers who sell without having over the door the public notice required, and the latter part is directed against the sale by persons not licensed under any circumstances.

(*i*) Taverns and shops each require licenses for the sale of spirituous liquors. The difference between them, independently of quantity, is, that while a tavern license confers a right to sell liquors to be consumed within the house, the shop license confers no such right.

(*j*) No distinction is made between spirituous liquors and fermented or manufactured liquors. Among the former are classed, as examples, wine, rum and brandy. Among the latter, beer, ale and cider.

(*k*) The penalties are recoverable before two justices of the peace, that is, two at least are required to try and convict. Notwithstanding, it is apprehended that one justice may receive the information, grant a summons or warrant to compel the attendance of witnesses, and do all other acts and matters that may be necessary preliminary to the hearing.

(*l*) The latter part of this section has been inserted to remove a doubt suggested by the editor in the first edition of this Manual.

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clock on Saturday night till the hour of eight of the clock on Monday morning thereafter, and during any further time on the said days and any hours on other days during which by any By-law of the Municipality where in such place or places may be situated, the same or the bar-room or bar-rooms thereof ought to be kept closed, save and except in cases where a requisition, for medicinal purposes, signed by a licensed medical practitioner or by a Justice of the Peace, is produced by the vendee or his agent, nor shall any such liquors be permitted or allowed to be drunk in any such places, except as aforesaid, during the time prohibited by this Act for the sale of the same. (*m*)

Exception.

Nor shall such liquor be drunk on the premises during the same.

258. A penalty for the first offence of not less than twenty dollars, with costs, or fifteen days' imprisonment, with

Penalty.

First offence.

(*m*) A by-law prohibiting the sale of intoxicating liquors on Sunday to all persons, without excepting the sale thereof to travellers and boarders, where sales to travellers and boarders were excepted, was held invalid by statute. (*In re Ross and the Corporation of the United Counties of York and Peel*, 14 U. C. C. P. 171.) A conviction not negativing the exceptions of the statute, has been held invalid. (*Wills* v. *Brown*, 9 U. C. L. J. 246.)

One of the essential points to be attended to in describing an offence in a conviction is, to negative every exemption, excuse or qualification, which accompanies the description of the offence in the enacting clause. Since no plea can be admitted to such a conviction and the defendant can have no remedy against it but from exception to some defect appearing upon the face of it and all proceedings are had in a summary manner, it is only reasonable that such a conviction should have the highest certainty, and satisfy the Court that the defendant had no such matter in his favour as the statute itself allows him to plead. This consideration would lead to a conclusion that it is necessary to negative all the provisoes annexed to the offence whether by the same or any other clause of the statute as well as those in the enacting clause itself. The rule however seems, as established in practice, to be restricted to those of the latter description only. (Paley's Summary Convictions, 4 edn. 192.) This is not an objection of form but of substance. (p. 193.) The rule therefore and distinction confirmed by the cases seems to be clear, viz., that all circumstances of exemption or modification that are either originally introduced into or incorporated by references to the enacting clause must be distinctly enumerated and negatived; but that such matters of exception as are given by other distinct clauses or provisoes need not be specifically set out or negatived (p. 195). But it is now enacted that in cases of appeal from any order, decision or conviction made or had before any Justice or Justices of the Peace in Upper Canada under the law relating to summary convictions, the Court to which such appeal is made shall hear and determine the charge or complaint in which such order, decision or conviction shall be made or had upon the merits, notwithstanding any defect of form *or otherwise* in such conviction. (Stat. 29 & 30 Vic. cap. 50. sec. 1.)

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hard labour in case of conviction, shall be recoverable from and leviable against the goods and chattels of the person or persons who are the proprietors in occupancy, or tenants or agents in occupancy, of the said place or places, who shall be found by himself or herself or themselves or his, her or their servants or agents, to have contravened the enactment in the preceding section or any part thereof,—for the second offence, a penalty against all such of not less than forty dollars, with costs, or twenty days imprisonment with hard labour; for a third offence, a penalty against all such of not less than one hundred dollars, with costs, or fifty days imprisonment with hard labour; and for a fourth or any after offence, a penalty against all such of not less than three months imprisonment, with hard labour, in the common gaol of the County wherein such place and places may be, (*n*) the number of such offences to be ascertained by the production of a certificate from the convicting Justice, or by other satisfactory evidence to the Justice before whom the information or complaint may be made; (*o*) and it is hereby enacted that convictions for several offences may be made under this Act although such offences may have been committed in the same day; provided always, that the increased penalties hereinbefore imposed shall only be recoverable in the case of offences committed on different days. (*p*)

Second offence.

Third offence

Fourth offence, &c.

Proof of former offence.

Proviso.

Who may prosecute.

Limitation of suits.

259. Any person or persons may be the informant or informants, complainant or complainants, in prosecuting under this Act; all proceedings shall be begun within twenty days

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(*n*) The persons made subject to the penalties are "the person or persons who are the proprietors in occupancy, or tenants or agents in occupancy" of the place or places where the offence was committed.

The penalties are graduated in severity in proportion to their frequency. Thus,

1st offence—Not less than $20, with costs, or 15 days' imprisonment, with hard labour.

2nd offence—Not less than $40, with costs, or 20 days' imprisonment, with hard labour.

3rd offence—Not less than $100, with costs, or 50 days' imprisonment, with hard labour.

4th or any after offence—Not less than three months' imprisonment, with hard labour.

(*o*) The language here is very general. The number of such offences to be ascertained by the production of a certificate, &c., or by "*other* satisfactory evidence to the Justice, &c."

(*p*) The meaning is that several offences, though committed on the same day, may be punished each with the minimum penalty described. The increased penalties are only recoverable where the offences are committed on different days.

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from the date of the offence, all informations, complaints or other necessary proceedings may be brought and heard before any one or more Justices of the Peace of the County where the offence or offences were committed or done, and the mode of procedure in, and the forms appended to the Act, chapter one hundred and three of the Consolidated Statutes of Canada, for summary proceedings, may be followed as regards the cases and proceedings under this Act. (q) Procedure.

260. The said penalties in money, or any portion of them which may be recovered, shall be paid to the convicting Justice or other acting Justice in the case, and by him paid equally, one half to the informant or complainant, and the other half to the Treasurer of the Municipality where the place or places referred to are situated; and for the recovery of the said penalties and costs it shall and may be lawful for any Justice or Justices to issue a warrant of distress to any constable or peace officer, against the goods and chattels of the said offender, and in case no sufficient goods be found to satisfy such penalty and costs, then it shall and may be lawful for the said Justice or Justices to order that the person or persons so convicted, be imprisoned in any common gaol in the County or City in which such conviction takes place, for any term not exceeding thirty days, unless the amount of penalty and costs be sooner paid. (r) Application of penalties. Recovery of penalties. Imprisonment for non-payment.

261. The word "Liquors" shall be understood to mean Interpretation.

(q) Provision is here made as to the informer; limitation as to time for prosecution and procedure generally. Thus:

Any person, &c., may be the informant, &c.

All proceedings shall be begun within twenty days from the date of the offence.

All informations, &c., or other necessary proceedings may be brought and heard before any one or more Justices, &c.

The mode of procedure, &c., directed by Con. Stat. Can. cap. 103, may be followed.

(r) Two points deserve attention, the distribution of the penalties and mode of enforcing payment.

1. One half of the penalty is to be paid to the informant and the remaining half to the Treasurer of the Municipality.
2. The penalty is to be levied by distress of the goods and chattels of the offender, and if no sufficient goods, then by imprisonment for any period not exceeding 30 days, unless the penalty and costs be sooner paid.

The latter provision must be read as controlled by sec. 258, which see and notes thereto.

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and comprehend all spirituous and malt liquors, and all combinations of liquors or drinks which are intoxicating. (*s*)

INSPECTORS OF LICENSES.

By-laws for appointment of Inspectors of Shop and Tavern Licenses.

262. The Council of every Township, Town, or Incorporated Village, and the Commissioners of Police in every city, may respectively pass By-laws: (*t*)

1. For appointing annually one or more fit and proper persons, possessing the same property qualification as that required for members of the Council of the municipality, to be Inspectors of Shop and Tavern-licenses, who shall hold office during the current year, and any vacancy occurring during the year shall be filled by the Council or Commissioners of Police, for the remainder of such year; (*u*)

Term of office.

Duties and remuneration of.

Security.

2. For fixing and defining the duties, powers and privileges of the Inspectors so appointed; the remuneration they shall receive; and the security to be given by them for the efficient discharge of the duties of their office; (*v*) such By-laws not being contrary to law. (*w*)

Inspectors may endorse licenses to authorise sale of liquors elsewhere than in the house described in license.

263. Any Inspector of Licenses may, in his discretion (but subject to any By-law of the Municipality, or Commissioners of Police) endorse on any license, permission to the person holding the license, to sell the liquors mentioned in his License at any place out of his house, or to remove from the house licensed to another house to be described in the indorsement and situate within the same Municipality, and such

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(*s*) The word "liquor" is, when unrestricted, a word of general signification extending to water, milk, sap, juice, &c., but its common application as here used is to spirituous and malt liquors and combinations of drinks which are intoxicating.

(*t*) This section is for the appointment of inspectors of licenses, and for the regulation of their duties when appointed.

(*u*) The Court has refused to interfere by *mandamus* to compel inspectors to examine a certain house fitted up by the applicant as a saloon, and to grant him the proper certificate if he should be found to have complied with the by-law of the Municipal Council in that behalf (*In re Baxter* v. *Hesson et al*, 12 U.C. Q. B. 139.) So the Court has refused to interfere by *mandamus* to compel the revocation of a certificate for license when granted. (*The Queen ex rel. Gamble* v. *Burnside*, 8 U. C. Q. B. 263.)

(*v*) The Inspector may be remunerated by fees. The fees are to be deemed as payment for services rendered, and not to be looked upon as a part of the duty charged for the license. (*In re Harrison and The Town Council of the Town of Owen Sound*, 16 U. C. Q. B. 166.)

(*w*) See note *n* to sec. 191.

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permission shall authorize the holder thereof to sell such Liquors in the House mentioned in the indorsement, during the unexpired portion of the term for which the License was granted, and upon the same terms and conditions; And any bond or security which such holder may have given for any purpose relative to such license, shall apply to the house or place to which such removal is authorized. (*a*)

264. Every Council of a Township, City, Town, or Incorporated Village, (*b*) may also pass By-laws; (*c*) By-laws for:

BILLIARD TABLES.

1. For licensing, regulating and governing all persons who, for hire or gain directly or indirectly, keep, or have in their possession, or on their premises, any Billiard-table, (*d*) or who keep or have a Billiard-table in a house or place of public entertainment or resort, whether such Billiard Table is used or not, (*e*) and for fixing the sum to be paid for a License so to have or keep such Billiard-table, and the time such License shall be in force; (*f*) Licensing and regulating Billiard Tables.

VICTUALLING HOUSES, &c.

2. For limiting the number of and regulating Victualling Houses, ordinaries, and houses where fruit, oysters, clams, or victuals are sold to be eaten therein, and all other places for the reception, refreshment or entertainment of the public; (*g*) and, Victualling houses, number and regulation of

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(*a*) Any one having a tavern license may sell liquors by retail to be consumed out of his house, in the same quantities as if to be consumed in the house. (Sec. 253.) No one having a shop license is entitled thereunder to sell liquors to be consumed in his house. (Sec. 255.) In the event of it being desired by the licensee to sell temporarily at a place other than his house, or to change his house, the provisions of this section come to his relief.

(*b*) The power does not extend to *County* Councils.

(*c*) See note *l* to sec. 190.

(*d*) Whether or not such person is the keeper of a tavern or house of public entertainment. (See *Church qui tam* v. *Richards*, 6 U. C. Q. B. 562.)

(*e*) If the billiard table is in a house or place of public entertainment it must be licensed, whether used or not.

(*f*) The section extends—1. To all persons who *for hire or gain* keep on their premises a billiard table; and 2. To all persons who keep a billiard table *in a house or place of public entertainment or resort.*

(*g*) The power to limit involves no power to *suppress.* (See note *o* to sec. 249.)

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License and fee for same.

3. For licensing the same when no other provision exists therefor, and for fixing the rate of such Licenses not exceeding Twenty dollars. (*h*)

LICENSES, HOW LONG TO CONTINUE.

Licenses when not required to be renewed.

265. In case any By-law respecting Licenses is repealed, altered or amended, no person shall be required to take out a new license or to pay any additional sum upon his license during the time for which the same has been granted to him. (*i*)

LICENSE FEES.

License fees to belong to Municipalty.

266. All sums of money levied for licenses over and above the sum payable to the Province, by way of duty, shall belong to the Corporation of the Municipality in which they are levied. (*j*)

DISORDERLY INNS.

How keepers of disorderly inns to be proceeded against.

267. The Mayor or Police Magistrate of a Town or City, or the Reeve of a Township or Village with any one Justice of the Peace having Jurisdiction in the Township or Village, upon complaint made on oath to them, or one of them respectively, of riotous or disorderly conduct in any Inn, Tavern, Ale or Beer house situate within their jurisdiction, may summon the keeper of the Inn, Tavern, Ale or Beer House, to answer the complaint, and may investigate the same summarily, and either dismiss the complaint with costs to be paid by the complainant, or convict the keeper of having a riotous or disorderly house, and annul his license, or suspend the same for not more than sixty days, with or without costs, as in his or their discretion may seem just. (*k*)

(*h*) This is a general power to license victualling houses, &c. It can only be exercised "when no other provision exists therefor." No license is to cost more than $20.

(*i*) This section appears to extend to all licenses, whether to sell spirituous liquors, keep billiard tables or victualling houses, &c. The object of it is to protect the existence of licenses *bona fide* issued under a by-law, notwithstanding the repeal, alteration or amendment of such by-law.

(*j*) For sums payable to the Provincial Government on licenses to sell spirituous liquors, &c., see note *a* to sec. 250.

(*k*) The powers given are:
1. Upon complaint, &c., to summon the keeper of the inn, &c.
2. To investigate the complaint summarily.
3. To dismiss the complaint with costs to be paid by complainant.
4. *Or* to convict the keeper of having a riotous or disorderly house.
5. To annul his license.
6. *Or* suspend the same for not more than 60 days.
Costs to be discretionary.

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LAND MARKS AND BOUNDARIES.

268. In case the Council of any Township, City, Town, or Incorporated Village adopts a resolution on the application of one half of the resident landholders to be affected thereby, that it is expedient to place durable monuments at the front or rear of any concession or range or part thereof in the Municipality, or at the front or rear angles of the lots therein, (*l*) the Council may apply to the Governor in the manner provided for in the sixth to the tenth sections of the Consolidated Statute for Upper Canada respecting the survey of lands, praying him to cause a survey of such concession or range, or such part thereof, to be made, and such monuments to be placed under the authority of the Commissioner of Crown Lands, (*m*) and the person or persons making the survey shall

Placing land marks and monuments to mark boundaries.

Con. Stat. U. C. cap. 93.

One R. laid an information before G. a Police Magistrate, stating that one P. G. the keeper of a tavern duly licensed, kept a disorderly house, &c., and prayed that a warrant might issue against the said P. G. "and all others found or convened in the house." A warrant was accordingly issued by G. directed to the Chief Constable and all other constables of the City of Toronto, &c., commanding them to apprehend Mrs. P. G. "and all others found and convened in her house to answer, &c." The defendants, except R. and G., went to the house at 9 o'clock on a certain evening and arrested Mrs. P. G. and several other persons, among whom was the plaintiff, a traveller, who went to the house as a guest. There was no disturbance whatever in the house that evening. Plaintiff was non-suited. *Held*, on motion to set aside the nonsuit, that defendant R. having been in no way connected with the arrest of plaintiff, the nonsuit should stand as regards him, but should be set aside and a new trial ordered as to the remaining parties. (*Cleland* v. *Robinson et al.* 11 U. C. C. P. 416.)

(*l*) In the absence of such an application and such a resolution as the statute requires to authorize an application to the Governor to cause the survey to be made, the survey would be held wholly unauthorized. (*Cooper* v. *Wellbanks*, 14 U. C. C. P. 366.) The Court however will presume that everything which was done, was rightly done, until the contrary appear. (*Ib.*) Where it was shown that the application was made, not by one half the resident landholders to be affected by the survey, but by ten freeholders, over half of whom had no deeds for their lands, and that eleven or twelve freeholders who would be affected by the survey, were not parties to the application, the survey was held to be unauthorized. (*Ib.*)

(*m*) The sixth section of Con. Stat. U. C. cap. 93, recites that in several of the Townships in Upper Canada, some of the concession lines or parts of concession lines, were not run in the original survey performed under competent authority; that the surveys of some concession lines or parts of concession lines had been obliterated, and that owing to the want of such lines the inhabitants of such Townships are subject to serious inconvenience, and for remedy provided that the

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accordingly plant stone or other durable monuments at the front or at the rear of such concession or range, or such part thereof as aforesaid, or at the front and rear angles of every lot therein (as the case may be) and the limits of each lot so ascertained and marked, shall be the true limits thereof; (*n*) and the costs of the survey shall be defrayed in the manner prescribed by the said Statute. (*o*)

Costs of survey.

Certain Councils may pass By-laws for

269. The Council of every Township, City, Town or Incorporated Village (*p*) may also pass By-laws: (*q*)

PROVISIONS FOR ESTABLISHING BOUNDARIES.

Ascertaining and making boundaries of townships.

1. For procuring the necessary estimates, and making the proper application for ascertaining and establishing the boundary lines of the Municipality, according to law, in case the same has not been done; and for erecting and providing for the preservation of the durable monuments required to be erected for evidencing the same; (*r*)

County Council of the County in which any Township in Upper Canada is situate, may, on the application of one half the resident landholders, or may without such application, make application to the Governor requesting him to cause any such line to be surveyed and marked by permanent stone boundaries, under the direction and order of the Commissioner of Crown Lands.

(*n*) If the surveyor proceed otherwise than as directed by the statute, the survey will be unauthorized. (See *Tanner* v. *Bissell et al.*, 21 U.C. Q. B. 553.)

(*o*) All expenses incurred in performing any survey or placing any monument or boundary under the provision of Con. Stat. U. C. cap. 93, must be paid by the County Treasurer, to the person or persons employed in such survey, on the certificate and order of the Commissioner of Crown Lands. (Con. Stat. U. C. cap. 93, sec. 10.) The Council may cause to be laid before them an estimate of the sum requisite to defray the expense to be incurred, in order that the same may be levied on the proprietors of the land in each concession or part of a concession interested, in proportion to the quantity of land held by them respectively in such concession or part of a concession, in the same manner as any other sum required for any other purposes authorized by law may be levied. (*Ib.* sec. 9.) A by-law to levy the amount "from the patented and leased lands" of the townships is bad. (*In re Scott and the Corporation of the County of Peterborough*, 25 U.C. Q.B. 458; *In re Scott and the Corporation of the Township of Harvey*, T. T. Q. B. 1866, not yet reported.) *Semble*, the statute does not authorize the survey of a whole township, but only of some concession or part of a concession therein. (*Ib.*)

(*p*) Neither County Councils nor Police Villages are included.

(*q*) The powers mentioned in sec. 268 may be exercised by resolution, these by by-law.

(*r*) See sec. 268, and notes thereto.

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SCHOOLS.

2. For obtaining such real property as may be required for the erection of Common School Houses thereon, and for other Common School purposes, and for the disposal thereof when no longer required; and for providing for the establishment and support of Common Schools according to law; (*s*). Acquiring land for schools, &c.

CEMETERIES.

3. For accepting or purchasing land for public Cemeteries, as well within as without the Municipality, and for laying out, improving and managing the same; but no land shall be accepted or purchased for such purpose except by a By-law declaring in express terms that the land is appropriated for a public Cemetery, and for no other purpose; and thereupon such land, although without the Municipality, shall become part thereof, and shall cease to be part of the Municipality to which it formerly belonged; and such By-law shall not be repealed; (*t*) For establishing cemeteries.

4. For selling or leasing portions of such land for the purpose of interment, in family vaults or otherwise, and for declaring in the conveyance the terms on which such portions shall be held; (*u*) For selling portions thereof on limited terms

CRUELTY TO ANIMALS.

5. For preventing cruelty to animals, and for preventing the destruction of birds, the By-laws for these purposes not being inconsistent with any statute in that behalf; (*v*) Preventing cruelty to animals.

(*s*) School Trustees of a Township cannot, without reference to the freeholders, determine upon the site of a school-house, and purchase it, and impose a rate to meet the expense. (*Orr* v. *Ranney et al.*, 12 U.C. Q. B. 377.)

(*t*) As a rule, the jurisdiction of every Council is confined to the municipality the Council represents. (Sec. 190.) Here an authority beyond the limits of the municipality is given. That authority is to accept or purchase land for public cemeteries, as well within as *without* the municipality. The acceptance or purchase is to be by by-law, declaring in express terms that the land is appropriated for a public cemetery, *and for no other purpose*. When this is done, the land, although without the municipality, becomes part thereof for all purposes of local government.

(*u*) There is no limitation as to the interest to be conveyed. When a Municipality is seized in fee simple, the conveyance may be made either for ever or for years. The power is to "sell" or "lease." The conveyance must be executed under the corporate seal of the Municipal Council.

(*v*) See note *n* to sec. 191.

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DOGS.

Tax on dogs. 6. For imposing a tax on the owners, possessors or harbourers of dogs; (*w*)

Killing dogs. 7. For killing dogs running at large contrary to the By-laws; (*x*)

FENCES.

Height and kind of fences. 8. For settling the height and description of lawful fences; (*y*)

DIVISION FENCES.

Of division fences. 9. For regulating the height, extent and description of lawful division fences; and for determining how the cost thereof shall be apportioned; and for directing that any amount so apportioned shall be recovered in the same manner as penalties not otherwise provided for may be recovered under this Act; but until such By-laws be made, the Act respecting line fences and water courses shall continue applicable to the Municipality; (*z*)

WEEDS.

Destruction of weeds. 10. For preventing the growth of weeds detrimental to good husbandry; (*a*)

EXHIBITIONS, SHOWS, &c.

Licensing public shows 11. For preventing or regulating and licensing exhibitions of Wax-work, Menageries, Circus-riding, and other such like shows, usually exhibited by showmen, and for requiring the payment of license fees for authorizing the same, not exceeding one hundred dollars for every such license, and for impos-

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(*w*) The common belief is that only the *owners* of dogs are taxable for them. It is here enacted that not only the owner, but the *possessor* or *harbourer* may be taxed.

(*x*) The power is to authorize the *killing* of dogs. No provision is made as to the mode of killing. Poisoning as much as shooting is lawful. The authority to kill of course exists only when the dog is found running at large "contrary to the by-laws." (See *McKenzie* v. *Campbell*, 1 U. C. Q. B. 241.)

(*y*) The power is to *settle*, that is, to determine by some general regulation the height and description of fences, whether division fences or not.

(*z*) Any fence coming within the meaning of a lawful fence, in any by-law of the Municipal Council in that behalf, is to be considered a lawful fence under this act; and when no such by-law exists, any fence-viewers, when called upon, are to exercise their own judgment, and decide what they consider to be a lawful fence. (Con. Stat. U. C. cap. 57, sec. 2.)

(*a*) It is well to observe that this subsection is in terms confined to "weeds detrimental to good husbandry."

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ing fines upon persons infringing such By-laws, and for levying the same by distress and sale of the goods and chattels of such showman, or belonging to or used in such Exhibition, whether owned by such showman or not, or for the imprisonment of such offenders for any term not exceeding one month; (*b*) Provided always, that it shall not be lawful for the Council of any Municipal Corporation, or the Commissioners of Police in any City, to grant licenses or license certificates to persons having exhibitions of any work or circus-riding, or other shows of a like character, or places of gambling, or to those engaged in traffic in fruits, goods, wares or merchandise of whatever description, for gain, on the days of the exhibition of the Agricultural Association of Upper Canada, or of any County, Electoral Division or Township Agricultural Society, either on the grounds of such Society, or within the distance of three hundred yards from such grounds; (*c*)

Fines for infraction.

Proviso: Licenses not to be granted for certain times and places.

GRAVES.

12. For preventing the violation of cemeteries, graves, tombs, tombstones or vaults, where the dead are interred. (*d*)

Protecting graves.

INJURIES TO PRIVATE PROPERTY AND NOTICES.

13. For preventing the injuring or destroying of trees planted or preserved for shade or ornament; (*e*)

Ornamental trees.

(*b*) There is authority given as well to *prevent* as to regulate and license shows. The maximum license fee of $100 is much larger than was required under the old law. The regulations, &c., will of course be by by-law. Persons infringing the by-laws are made liable to fine, and the fine is to be levied by distress and sale of the goods and chattels of the showman, or belonging to or used in the exhibition, *whether owned by the showman or not.* Power to imprison for any term not exceeding one calendar month is also given. But this power, it is apprehended, can only be exercised in default of payment of the fine, and of the goods and chattels liable to be levied for the same. (See sec. 246, sub-sec. 8.)

(*c*) This proviso is new.

(*d*) It has been held that it is an indictable offence to take up a dead body even for the purpose of dissection. Common decency requires that such a practice should be prevented. The bare idea of it makes nature revolt. It is an offence against decency to take a person's dead body, with intent to sell or dispose of it for gain or profit. It has been held that to sell the dead body of a capital convict for the purpose of dissection, where dissection was no part of the sentence, is a misdemeanor, and indictable at common law. (1 Russell on Crimes, 464.)

(*e*) If any person unlawfully and maliciously breaks, barks, roots up, or otherwise destroys or damages the whole or any part of any tree, sapling or shrub, or any underwood respectively growing in any

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Signs.

14. For preventing the pulling down or defacing of sign-boards, and of printed or written notices; (*f*)

GAS AND WATER.

Authorising Gas and Water Companies to lay down pipes, &c.

15. For authorising any corporate Gas or Water Company to lay down pipes or conduits for the conveyance of water or gas under streets or public squares, subject to such regulations as the Council sees fit; (*g*) and,

STOCK IN.

Taking stock in Gas and Water Companies.

Proviso:

16. For acquiring stock in, or lending money to, any such Company; and for guaranteeing the payment of money borrowed by, or of debentures issued for money so borrowed by, the Company; Provided the By-law is consented to by the electors, as hereinbefore provided. (*h*)

Head of Corporation to be a Director.

270. The Head of any Corporation holding Stock in any such Company to the amount of ten thousand dollars shall be *ex officio* a Director of the Company in addition to the other Directors thereof, and shall also be entitled to vote on such Stock at any Election of Directors. (*i*)

PROVISIONS APPLICABLE TO TOWNSHIPS AND COUNTIES.

The next following Section applies to Townships and Counties: (*j*)

271. The Council (*k*) of every Township and Coun-

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park, pleasure ground, garden, orchard or avenue, or in any ground adjoining or belonging to any dwelling house, the offender, &c., is guilty of a misdemeanor. (Con. Stat. Can. cap. 93, sec. 24.)

(*f*) This is not a criminal offence, that is, not punishable as a misdemeanor.

(*g*) As to the organization of gas and water companies, see Con. Stat. Can. cap. 65.

(*h*) See sec. 196.

(*i*) This section applies only to gas and water companies. See a similar provision in regard to railway companies. (Sec. 351.)

(*j*) See note *f* to sec. 245.

(*k*) The Council is not to be confounded with the Corporation. It is the governing body acting on behalf of the Corporation for the particular year. It is moreover a fluctuating body; the Council for one year not being identical with the Council for another year, and not to be so looked upon even though it should happen to be composed of the same persons (per Robinson, C. J., in *Municipality of East Nissouri* v. *Horseman*, 16 U. C. Q. B. 583.) The members of the Council are not the Corporation, but the agents of the Corporation for the affairs and

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ty (*l*) may pass By-laws for paying the Members of the Council for their attendance in Council, (*m*) at a rate not exceeding two dollars per diem, and five cents per mile necessarily travelled to and from such attendance. (*n*)

Remuneration to Councillors limited.

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funds of the Corporation. When these agents are proved so to misappropriate the funds of the Corporation as to put the money into their own pockets when not authorized so to do, an action at the suit of the Corporation will lie against them to recover it back, and when that misappropriation is mixed up with what may have been rightfully paid, it is but right in order to operate as a safeguard to the Corporation, to cast the burthen of proof on the agent, to separate from the appropriation he has received, that portion which he would be legally entitled to take (per Burns, J., in *Municipality of East Nissouri* v. *Horseman*, 16 U. C. Q. B. 588) and it would be well for those who take part in the illegal appropriation of public moneys, to reflect that there is not only a civil but a criminal remedy (per Robinson, C. J., in *Daniels* v. *The Municipal Council of the Township of Burford*, 10 U.C. Q. B. 481.) The Treasurer should not pay money on any or every draft and order which the Reeve for the time being may direct him to pay. The Township moneys will probably be considered as still in his hands, unless paid out on a proper legal authority, for purposes contemplated and authorized by law, at least until he has received a formal acquittance and discharge from the Municipality. (*The Municipal Council of East Nissouri* v. *Horseman et al*, 9 U. C. C. P. 191, per Draper, C.J.) Nor should he pay money on an illegal order or resolution, for an act of Parliament should be regarded by him as a higher authority than the resolution or by-law of a corporation created by act of Parliament (per Robinson, C. J., in *Daniels* v. *The Municipal Council of the Township of Burford*, 10 U. C. Q. B. 481; and if a treasurer so pay money on an illegal order or resolution, he would be probably subject to criminal prosecution (per Robinson, C. J., in *Municipality of East Nissouri* v. *Horseman*, 16 U. C. Q. B. 580), but not now liable to any action at law for moneys paid by him in accordance with a by-law or resolution of the Council. (Sec. 162.)

(*l*) The power extends to Township and County Councils only. The power was formerly restricted to County Councils. (See *The Queen* v. *The District Council of the District of Gore*, 5 U. C. Q. B. 357; *In re Wright and the Municipal Council of the Township of Cornwall*, 9 U. C. Q. B. 442.) The Councils of Cities, Towns, and Incorporated Villages are as much as ever without the power.

(*m*) The power when given must be exercised by *by-law*—not by resolution. (See *The Queen ex rel. Allemaing* v. *Zoeger*, 1 U. C. Prac. R. 219; *Daniels* v. *The Municipal Council of Burford*, 10 U. C. Q. B. 478.)

(*n*) The power at one time even when possessed by Township and County Councils, was restricted to the remuneration of the Councillors for *attendance*, at the rate of $1 50 per diem. (*In re Patterson and the Corporation of the County of Grey*, 18 U. C. Q. B. 189.) The allowance is now increased to $2 per diem for attendance, *and* "five cents per mile necessarily travelled to and from such attendance." This however does not authorize the Councils named, to vote among themselves

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INVESTMENT OF MONEYS.

Appropriation of certain moneys or education.

Investment.

272. From and after the passing of this Act, (*o*) any Municipal Corporation having surplus moneys derived from the Upper Canada Municipalities Fund, shall have power, by By-law, to set such surplus apart for educational purposes, and to invest the same as well as any other moneys held by such Municipal Corporation for, or by it lawfully appropriated to educational purposes, in first mortgages secured on real estate, held and used for farming purposes, and to be the first lien on or against such real estate, and from time to time as such securities mature, to invest in other like securities, or in the securities already mentioned by law, as may be directed by such By-law, or by other By-laws passed for that purpose; (*p*) Provided always, that no Municipal Corporation shall invest in such real estate, securities within the limits of its own Municipality, nor shall any sum, so invested, exceed one-third of the value of the real estate on which it is secured, according to the last revised and corrected assessment roll at the time it is so invested. (*q*)

Proviso: as to investment.

Investments already made legalized.

273. And whereas several Municipalities have heretofore invested moneys derived from the said fund and set apart for

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lump sums for services during the year (see *Daniels* v. *The Municipal Council of Burford*, 10 U. C. Q. B. 478; *In re Blaikie and the Corporation of the Township of Hamilton*, 25 U. C. Q. B. 469), or for other unknown or undescribed services. (*Municipality of East Nissouri* v. *Horseman*, 16 U. C. Q. B. 576.)

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(*o*) This section is taken from sec. 1 of Stat. 27 Vic. cap. 17, which was held not to be retrospective. (*In re Doherty and the Corporation of the Township of Toronto*, 25 U. C. Q. B. 409.)

(*p*) The section places no restriction upon the remedies of the mortgagees, in the event of default. So that the Municipality, being the mortgagees, are, after default, entitled to a decree of foreclosure and not restricted to a sale of the property, notwithstanding the Statutes of Mortmain. There is probably no serious danger of Municipalities holding land so acquired, to any alarming extent. If it should become a serious evil, the Legislature can cure it at any time by compelling a sale of the lands so acquired. (*The Municipality of Orford* v. *Bailey*, 12 Grant, 276.)

(*q*) This proviso is directed against possible abuses, and intended to secure safety of investment. The direction that the sum invested is not to exceed one third of the value of the real estate on which it is secured, according to the last revised and corrected assessment roll at the time the money is invested, is deserving of careful attention. Municipal Councillors are trustees for the rate-payers, and if they disregard the safeguard of this section, so as to commit a breach of trust, they would not only be held civilly responsible to make good the loss, but be liable to a criminal prosecution. (See sec. 277.)

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special purposes, in real estate security, be it enacted that such investments shall be legal and valid. (*r*)

Investment of moneys by Board of School Trustees.

274. The Board of School Trustees of any City or Town in Upper Canada, having surplus moneys for educational purposes, may invest the same in the purchase of Provincial Consolidated Loan Fund, or Municipal Debentures, or in such securities as are described in the next preceding section, subject to the provisions, conditions, limitations and restrictions therein contained; (*s*) and any By-law or resolution of any such Corporation heretofore made for authorizing any such investment, under which any such money has been so invested, shall be held to be a good and valid By-law or resolution. (*t*)

Investments heretofore made.

Loans to Boards of School Trustees by Municipalities.

275. Any Municipal Corporation having surplus moneys derived from the Upper Canada Municipalities Fund, shall have power by By-law to set such surplus apart for educational purposes, and to invest the same in a loan or loans to any Board or Boards of School Trustees within the limits of the Municipality, for such term or terms, and at such rate or rates of interest as may be agreed upon by and between the parties to such loan or loans respectively, and set forth in such By-law. (*u*)

(*r*) This section is taken from sec. 2 of Stat. 27 Vic. cap. 17. Its design is to ratify past investments. These Municipalities have, as mortgagees, though Corporations, and notwithstanding the Statutes of Mortmain, the same remedies for foreclosure or sale as other mortgagees. See note *p* to sec. 272.

(*s*) The two previous sections make provision for investment of surplus moneys for educational purposes, by Municipal Councils. This section which is taken from sec. 3 of Stat. 27 Vic. cap. 17, confers like powers subject to like restrictions, and it is presumed like remedies, upon the Board of School Trustees of any City or Town in Upper Canada.

(*t*) The former part of the section has reference to prospective investments. The latter part, like sec. 273, has relation only to investments already made.

(*u*) Before this section, which is taken from sec. 4 of Stat. 27 Vic. cap. 17, each Township had power to grant to the Trustees of any School section on their application, authority to borrow any sums of money necessary for specified purposes, in respect to School sites, School Houses and their appendages or for the purpose or erection of a teacher's residence, and in that event was required to cause to be levied in each year upon the taxable property in the section, a sufficient sum for the payment of the interest on the sum so borrowed, and a sum sufficient to pay off the principal within ten years. (Con. Stat. U. C. cap. 64, sec. 35.) By the section here annotated, the Municipal Corporation may not merely give authority to School Trustees to

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Boards of School Trustees may borrow such moneys.

276. Any Board of School Trustees may, with the consent of the freeholders and householders of their school section first had and obtained at a special meeting, duly called for that purpose, by By-law authorize the borrowing from any Municipal Corporation of any such surplus moneys as aforesaid, for such term and at such rate of interest as may be set forth in such By-law, for the purpose of purchasing a school site or school sites, or erecting a school house or school houses; and any sum or sums so borrowed shall be applied to that purpose, and to that only. (*a*)

Liability of members of corporation or School Trustees, in vesting money otherwise than authorized by this Act.

277 Any member of any Municipal Corporation or Board of School Trustees, who shall take part in or in any way be a party to the investment of any such moneys as are mentioned in this Act, by or on behalf of the Corporation of which he is a member, otherwise than as is authorized by this Act, or by the eleventh section of the Act respecting Clergy Reserves, or by any other law in that behalf made and provided, shall be held personally liable for any loss sustained by such Corporation and shall also be guilty of misdemeanor, and be liable to conviction in any Court of competent jurisdiction in Upper Canada, and upon conviction may be sentenced to fine or imprisonment, or both, in the discretion of such Court. (*b*)

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borrow, but itself lend money to the School Trustees within the limits of the Municipality, "for such term or terms and at such rate or rates of interest as may be agreed upon, &c., and "set forth in such by-law." The previous section is restricted to School Trustees "of any City or Town," but this extends to "any Board or Boards of School Trustees within the limits of the Municipality," and which may be a rural as well as a City or Town Municipality.

(*a*) This section which is taken from sec. 5 of Stat. 27 Vic. cap. 17, seems to flow from the preceding, and to a certain extent to depend upon it. The mere declaration that Municipal Corporations might lend money to Boards of School Trustees would be of little avail, unless the Trustees were empowered, as by this section they are, to borrow. The power is conferred upon the School Trustees, subject to the restriction that they shall procure "the consent of the freeholders and householders of their school section," and this is to be obtained "at a Special meeting duly called for that purpose" (see *Williams* v. *The School Trustees of Plympton*, 7 U. C. C. P. 559), and can only be exercised for borrowing the money for the purposes specified, viz., "purchasing a school site or school sites or erecting a school house or school houses."

(*b*) The members of a Municipal Council, or of a Board of School Trustees, are agents for the people whom they represent, with a limited authority, in regard to the borrowing or lending of money as well as in other matters. If they exceed their authority and loss result, they are to be held personally responsible for the loss, and not only so, but

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ELECTORAL DIVISIONS.

Dividing City or Town into Wards.

And Townships into electoral divisions.

278. The Council of any city or town may from time to time pass by-laws for dividing the wards of such city or town into two or more convenient electoral divisions, for establishing polling places therein, and for appointing Returning Officers therefor, and may from time to time repeal or vary the same; and the Council of every township or incorporated village may by By-law divide the same into two or more electoral divisions and may from time to time repeal or vary the same. (*c*)

POOR.

By-laws for the relief of the poor, when and how they may be passed.

279. Every Township Council may also make By-laws for raising money by a rate to be assessed equally on the whole ratable property of the township for the support of the poor resident in the township, or appropriating from the general funds of the municipality a sum for such purpose. (*d*)

OBSTRUCTIONS TO STREAMS AND WATER-COURSES.

By-laws for preventing

280. Every Township Council may also make By-laws for preventing the obstruction of streams, creeks and water-

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be guilty of a misdemeanor (note *b* to sec. 98) and for such misdemeanor be punished by fine or imprisonment or both, in the discretion of the Court.

(*c*) The section first relates to the Council of any City or Town, and secondly, to the Council of every Township or Incorporated Village.

The former (City or Town) may from time to time, pass by-laws:

1. For dividing the wards into two or more convenient electoral divisions.
2. For establishing polling places therein.
3. For appointing Returning Officers therefor.

And may from time to time repeal or vary the same.

The latter (Township or Incorporated Village) may by by-law:

Divide the Township or Village into two or more electoral divisions. And may from time to time repeal or vary the same.

(*d*) The Legislature here in a few words have enabled, but not required Township Councils, to raise money by rate for the support of the poor resident in the Township. Though the Legislature have given full authority to Township Councils of their own motion to raise a rate for the resident poor, they have left a discretion to be exercised in regard to the necessity of such a rate. In England the 43 Eliz. cap. 2, makes it the duty of Justices to provide for the relief of the poor. The words used in the English act are, "Shall and may make a rate," and then provides for overseers of the poor who have power to call for and administer the necessary funds. We have no such organization in Upper Canada. It is not therefore competent for our Courts to proceed upon the case of any individual applicant, for it does not rest with the Courts to dictate to Municipal Councils, what particular cases of distress call for public relief (per Robinson, C.J., in *Re McDougall and the Corporation of the Township of Lobo*, 21 U. C Q. B. 80; S. C., 7 U. C. L. J. 316.)

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obstructions of streams, &c.

courses, by trees, brushwood, timber or other materials, and for clearing away and removing such obstructions at the expense of the offenders or otherwise, and for levying the amount of such expense in the same manner as taxes are levied, and for imposing penalties on parties causing such obstructions. (*e*)

DRAINAGE IN TOWNSHIPS.

Drainage.

281. In case a majority in number of the resident owners of the property in any part of a township do petition the Council for the deepening of any stream, creek or water-course, or for draining of the property (*describing it*), the Council may procure an examination to be made by a competent engineer, or other competent person, of the stream, creek or water-course proposed to be deepened, or of the property proposed to be drained, and may procure plans and estimates to be made of the work by such engineer or person. (*f*)

Plans and estimates.

By-law.

282. If the Council be of opinion that the deepening of such stream, creek or water-course, or the draining of the locality described, would greatly benefit the township, the Council may pass a by-law: (*g*)

(*e*) The by-laws may be for the following purposes:

1. For preventing the obstruction of streams, &c.
2. For clearing away and removing such obstructions, at the expense of the guilty parties, or otherwise.
3. For levying the amount of such expense in the same manner as taxes are leviable.
4. For imposing penalties on parties causing such obstructions.

These powers in many respects resemble the provisions of 10 & 11 Vic. cap. 20, continued by 22 Vic. cap. 81; and see 3 Wm. IV. cap. 28, sec. 1; 2 Vic. cap. 16, secs. 1 & 4. 7 Vic. cap. 36; and 14 & 15 Vic. 123.

(*f*) The power to act is here made dependent on "a majority in number of the resident owners of the property in any part of the township" petitioning the Council for the deepening of any stream or water-course, or for draining of the property (describing it). When it is the joint interest of parties resident to open a ditch or water-course, for the purpose of letting off surplus water from swamps or low miry lands, in order to enable the owners or occupiers thereof to cultivate or improve the same, such parties must open a fair proportion of such ditch or water-course, according to their several interests. (Con. Stat. U. C. cap. 57, sec. 7.) All disputes respecting the opening, making or paying for ditches and water-courses, may be decided by fence-viewers. (*Ib.* sec. 8.) Councils of counties may purchase wet lands, drain the same, and afterwards effect sales thereof. (Sec. 345, sub-secs. 5, 6, 7, 8.)

(*g*) When a majority in numbers of the resident owners, &c., petition for the draining, &c., the Council may procure an examination to be made by a competent engineer, &c., and may procure plans and esti

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1. For providing for the deepening of the stream, creek or water-course, or the draining of the locality; (*h*) Its provisions

2. For assessing and levying upon the real property to be immediately benefited by the deepening or draining, a special rate, sufficient to include a sinking fund, for the repayment of Debentures, which such Councils are hereby authorized to issue in such cases respectively, to provide funds for such improvements, and for so assessing and levying the same, by an annual rate in the dollar on the real property so benefited, in proportion, as nearly as may be, to the benefit derived by such portion; (*i*) Assessment for expenses.

3. For regulating the time or times and manner in which the assessment shall be paid; (*j*) Time of paying.

4. For ascertaining and determining, through such engineer or person aforesaid, what real property will be immediately benefited by the deepening or draining, and the proportions in which the assessment should be made on the various portions of the land so benefited, and subject in every case to an appeal to the Council and the County Court Judge, in the same manner and on the same terms, as nearly as may be, as in the case of an ordinary assessment; (*k*) Ascertaining property benefited.

5. But the By-law shall not be valid unless, before the final passing thereof, the same has been published once or oftener in every week, for one month, in some newspaper published in the township, or if no newspaper be published therein, then in some newspaper published in the nearest municipality in which a newspaper is published; (*l*) Publication of by-law.

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mates, &c. (sec. 281); and if of opinion that the draining would greatly benefit the township, may pass a by-law under the section here annotated.

(*h*) See note *f* to sec. 281.

(*i*) The principle of assessing real property in a particular locality immediately benefited by a local improvement, where other parts of the municipality are unaffected by it, is just and reasonable.

(*j*) The *time* or *times* and *manner* in which the assessment is to be paid, may be regulated by the by-law. No limitation is here made as to either.

(*k*) The Council are, through the engineer, &c., to ascertain and *determine* what real property will be immediately benefited, &c., and the proportions in which the assessment should be made, &c. (see *In re Michie and the City of Toronto*, 11 U. C. C. P. 384), *subject to an appeal* to the County Judge, &c. It is not clear that the appeal is given from the determination as to the property immediately benefited, but rather, probably, from the proportions in which the assessment should be made. The point is doubtful, and as yet undecided.

(*l*) Though publication is made necessary, no vote of the electors is required. The petition of the landed proprietors, presented under

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Works extending beyond the townships.

6. Whenever it is necessary to continue the deepening or drainage aforesaid beyond the limits of any township, the engineer employed by the Corporation of such township may continue the survey and levels through the adjoining municipality, until he finds fall enough to carry the water beyond the limits of the township in which the deepening or draining was commenced; (*m*)

Not so extending, but benefiting lands in another municipality.

7. When a drain does not extend beyond the limit of the municipality in which it is commenced, but, in the opinion of the engineer or other person aforesaid, benefits lands in an adjoining municipality, or greatly improves any road lying within any municipality, or between any two or more municipalities, then the engineer shall charge the lands to be so benefited, and the Corporation or Corporations whose road or roads are improved, with such proportion of the cost of the work as he may deem just; and the amount so charged for roads, or agreed upon by the arbitrators, shall be paid out of the general funds of such municipality; (*n*)

Charging lands so benefited.

8. The engineer, when necessary, shall make plans and specifications of the deepening or drainage to be constructed, and charge the lands to be benefited by the work as provided herein; (*o*)

By what municipalities expenses ought to be borne.

9. The engineer, or other person aforesaid, shall determine and report to the Council by which he was employed, whether the deepening or drainage shall be constructed and maintained solely at the expense of such township, or whether it shall be constructed and maintained at the expense of both municipalities, and in what proportion; (*p*)

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sec. 281, is taken as sufficient evidence of the popular wants and popular will.

(*m*) Township officers have not, as a rule, any jurisdiction or power beyond the limits of their township. An exception is here created, whenever necessary "to continue the deepening or drainage beyond the limits." This sub-section is new.

(*n*) Not only is there power given to the township engineer to deepen a drain, or drain beyond the limits of his particular township, but but, when his doing so is a benefit to the adjoining municipality, the duty is thrown upon that municipality to pay such a proportion of the cost of the work as the engineer may deem just; and it is provided that the amount so charged "shall be paid out of the general funds of such municipality." The provision is a new one.

(*o*) The powers of the engineer are extensive, and among others "to charge the lands to be benefited by the work, as provided herein."

(*p*) The engineer, under the operation of sub-section 7, may charge an adjoining municipality with such proportion of "the cost of the work" as he may deem just. But the work, when constructed, must

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Notice by the municipality in which the work is commenced to the other.

10. The Corporation of the township in which the deepening or drainage is to be commenced, shall serve the head of the Corporation of the municipality into which the same is to be continued, or whose lands or roads are to be benefited, without the deepening or drainage being continued, with a copy of the report, plans and specifications of the engineer, when necessary, so far as they affect such last mentioned municipality, and unless the same is appealed from, as hereinafter provided, it shall (*q*) be binding on the Corporation of such municipality;

Duty of such other municipality

11. The Corporation of such last mentioned municipality shall, within four months from the delivery to the head of the Corporation of the engineer's report, as provided in the next preceding sub-section, pass a by-law, in the same manner as if a majority of the resident owners of the lands taxed had petitioned, as provided in the two hundred and eighty-first section of this Act, to raise such sum as may be named in the engineer's report, or, in case of an appeal, for such sum as may be determined by the arbitrators; (*r*)

Appeal allowed to such other municipality

12. The Council of the municipality into which the deepening or drainage is to be continued, or whose lands, road or roads are to be benefited without the deepening or drainage being carried within its limits, may, within thirty days from the day on which they receive the report, appeal therefrom, in which case they shall serve the head of the Corporation from which they received the report, with a notice of appeal; such notice shall state the grounds of appeal, the name of an engineer as their arbitrator, always the place, day and hour of meeting of the arbitrators; provided always, that not less than twenty days' notice of such meeting shall be given; (*s*)

Notice.

Arbitrator

Proviso.

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be maintained, and this sub-section enables him to direct "whether or not it shall be * * maintained at the expense of both municipalities, and in what proportion." This sub-section, like the three preceding sub-sections, is new.

(*q*) The Corporation, upon whom the copy of report, plans and specifications are served, must, within thirty days, appeal, as provided in subsection 12 of this section, or else will be fixed with the decision of the engineer.

(*r*) See sec. 281, and notes thereto.

(*s*) A time is limited within which the appeal, to be effectual, must be made, *i. e.*, "within thirty days from the day on which they receive the report;" and further, to make the appeal effectual, there must not be less than "twenty days' notice," showing:

1. The grounds of appeal.
2. The name of the engineer as an arbitrator.
3. The place, day and hour of meeting of the arbitrators.

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Arbitrator on part of Corporation appealed against.

13. The Corporation on which such notice is served shall, within fifteen days from the day on which the notice was served upon them, appoint an engineer to be arbitrator on their behalf; and in case of default the arbitrator shall, within ten days, be named by the Judge of the County Court of the county in which such municipality making default is situate; (*t*)

Meeting of arbitrators.

14. The arbitrators so appointed shall meet on the day and at the place appointed, or on such other day, not later than thirty days thereafter, as they themselves may agree upon.

Third arbitrator; hearing and award, copies to be filed, &c.

15. The arbitrators shall choose a third arbitrator, and shall then hear and determine the matter in dispute, and make their award in triplicate, which shall be binding on all parties, and one copy thereof shall be filed with the Clerk of each of the municipalities interested, and one shall be filed with the Registrar of deeds for the county in which either of the townships is situate; (*u*)

Duties of municipalities after the drainage is is completed.

16. After such deepening or drainage is fully made and completed, it shall be the duty of each municipality to preserve, maintain and keep the same within its own limits; and any such municipality neglecting or refusing so to do, upon reasonable notice in writing being given by any party interested therein, shall be liable to an indictment for such neglect or refusal, as well as to pecuniary damages to any person who, or whose property, shall be injuriously affected thereby. (*v*)

INSPECTORS OF WEIGHTS AND MEASURES.

Inspectors of of weights and measures; their powers.

283. The Council of every County, City and Town may pass By-laws: (*a*)

1. For appointing Inspectors to regulate weights (*b*)

(*t*) The dissatisfied Municipal Corporation first appoints its arbitrator; then the opposing Municipal Corporation must, within fifteen days, appoint an engineer as its arbitrator.

(*u*) It is intended that the third arbitrator shall be appointed before any of the arbitrators act on the reference.

(*v*) See note *n* to this section.

(*a*) The preceding sections (secs. 280, 281, 282) apply to Township Councils only; the section here annotated to the Council of "every county, city and town."

(*b*) The power to appoint Inspectors of Weights and Measures was at first vested in the magistrates in quarter sessions. (4 Geo. IV. cap. 16, sec. 6, 1 sess.) The Legislature afterwards assumed that the power was transferred to Municipal Councils (12 Vic. cap. 85, sec. 12), but in 1855 removed all doubt on the point by passing an act expressly giving the power to each county and city. (18 Vic. cap. 185, sec. 1.) By the act here annotated, the power is in addition conferred upon the Councils of towns.

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and measures, according to the lawful standard; (*c*)

2. For visiting all places wherein weights and measures, steelyards or weighing machines of any description are used; (*d*)

3. For seizing and destroying such as are not according to the standard; (*e*)

4. For imposing and collecting penalties upon persons who are found in possession of unstamped or unjust weights, measures, steelyards or other weighing machines; (*f*)

PUBLIC MORALS.

284. The Council of every County, City and Town may also pass By-laws: By-laws for other purposes.

1. For preventing the sale or gift of intoxicating drink to a child, apprentice or servant, without the consent of a parent, master or legal protector; (*g*) Giving drink to children, &c

(*c*) In 1823, the Legislature set apart the sum of £75 towards purchasing a complete set of weights and measures for Upper Canada, according to the standard of the Exchequer in England (4 Geo. IV. cap. 16, sec. 2, 1 sess.), which standard was directed to remain in the custody of the Secretary of the Province. (*Ib.*) Upon the application of the magistrates in quarter sessions assembled in any district, the Secretary, at the cost of the district, was bound to furnish to the district a true standard of weights and measures (*Ib.* sec. 3; these to be deposited with District Inspectors. (*Ib.* sec. 4.) Provision was afterwards made, allowing the municipality of any city, town or incorporated village appointing an Inspector of Weights and Measures, to adjust weights and measures for the use of such city, town or incorporated village, by the standard weights and measures in the possession of the District or County Inspector. (12 Vic. cap. 85, sec. 12.) Incorporated villages are no longer in terms empowered to do so; for the section here annotated applies only to "counties, cities and towns."

(*d*) It is necessary that weights and measures should be "according to the lawful standard," and in aid of this enactment power is given for visiting "all places where weights and measures of any description are used."

(*e*) The power to visit places where weights and measures, &c., are used, would be of little value as a preventive measure, were it not for the subsection here annotated, for "seizing and destroying such as are not according to the standard."

(*f*) Powers such as the foregoing were at one time directly given to Inspectors (4 Geo. IV. cap. 16; 3 Vic. cap. 17); they are now transferred to the Council of "every county, city and town," to be exercised "by by-law."

(*g*) The by-law may be passed to prevent the *sale* or *gift* of intoxicating drink to the classes mentioned, unless under the circumstances directed, that is, to a child, apprentice or servant, with the consent of the parent, master or legal protector, and not otherwise. As to the general power to regulate, limit or prohibit the sale of spiritous liquors to people generally, see sec. 249.

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Indecent placards, &c.

2. For preventing the posting of indecent placards, writings or pictures, or the writing of indecent words, or the making of indecent pictures or drawings, on walls or fences in streets or public places; (*h*)

Drunkenness, &c.

3. For preventing vice, drunkenness, profane swearing, obscene, blasphemous or grossly insulting language, and other immorality and indecency in streets, highways or public places; (*i*)

Lewdness.

4. For suppressing disorderly houses and houses of ill-fame; (*j*)

Racing.

5. For preventing horse-racing; (*k*)

Exhibitions, &c.

6. For preventing or regulating and licensing exhibitions held or kept for hire or profit, bowling alleys, and other places of amusement; (*l*)

(*h*) The things which may be prevented by by-law, under this sub-section are the following:

1. The posting of indecent placards, writings or pictures.
2. The writing of indecent words.
3. The making of indecent pictures or drawings.

A thing may be said to be "indecent" when offensive to modesty or delicacy.

(*i*) The offences here enumerated are classed "immorality and indecency." The power is to pass a by-law to prevent vice, drunkenness, &c., and *other* immorality and indecency in streets, highways or public places. Immorality or indecency in this sense may be defined as something unbecoming—not fit to be seen or heard—any action or behaviour which is deemed a violation of modesty, or an offence to delicacy, as wanton actions, obscene language, and generally whatever shocks or tends to excite a blush in a spectator.

(*j*) It is clearly agreed that keeping a bawdy house is a common nuisance, as it endangers the public peace by drawing together dissolute and debauched persons. As such, it is indictable. (1 Russell on Crimes, 322.)

(*k*) The power is to *prevent* horse-racing. The former act was to "prevent or regulate." Horse-racing is not under all circumstances illegal. (Oliphant on Horses, 283.) No person is, however, permitted by the law to run a horse at a race unless it is his own, nor to enter more than one horse for the same "plate," upon pain of forfeiting the horses. (13 Geo. II. cap. 19.) No party can recover a wager on a horse race that is illegal within the statute. (*Sheldon* v. *Law*, 3 U. C. O. S. 85.) The proprietor of a race-course is not responsible for the "purse," unless upon clear proof of an express understanding to that effect. (*Gates* v. *Tinning*, 3 U. C. Q. B. 295.) Nor has the winner a right to recover back his "entrance money," because the purse has not been paid over to him. (*Ib.*)

(*l*) Townships and incorporated villages have power to pass by-laws to prevent or regulate circus-riding and other shows (sec. 269, sub-sec. 11), though not empowered to pass by-laws under the clause here annotated.

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7. For suppressing gambling houses, and for seizing and destroying faro-banks, rouge et noir, roulette tables, and other devices for gambling found therein; (*m*) Gaming.

8. For restraining and punishing vagrants, mendicants and persons found drunk or disorderly in any street, highway or public place; (*n*) Vagrants.

9. For preventing indecent public exposure, of the person, and other indecent exhibitions; (*o*) Indecent exposure.

10. For preventing or regulating the bathing or washing the person in any public water, near a public highway; (*p*) Bathing.

PROVISIONS APPLICABLE TO COUNTIES, CITIES AND TOWNS SEPARATED FROM COUNTIES.

285. The following sections, numbered from two hundred and eighty-six to two hundred and eighty-eight, both inclusive, shall apply to the following Municipalities: (*q*) Extent of section to—

1. Counties;
2. Cities;
3. Towns separated from Counties.

(*m*) All common gaming houses are nuisances in the eye of the law, being detrimental to the public, as they promote cheating and other corrupt practices, and entice numbers of persons to idleness, whose time might be otherwise employed for the good of the community. (1 Hawke, P. C. cap. 75, sec. 6.)

(*n*) The ancient statutes contain very severe regulations as to vagrants. (22 Hen. VIII. cap. 12; 27 Hen. VIII. cap. 25; 1 Edw. VI. cap. 3; 3 & 4 Edw. VI. cap. 16; 14 Eliz. cap. 5; 18 Eliz. cap. 3; 35 Eliz. cap. 7; 13 & 14 Car. 2, cap. 12, sec. 23; 12 Anne, st. 2, cap. 23; 13 Geo. II. cap. 24; 17 Geo. II. cap. 5.) The last mentioned act (17 Geo. II. cap. 5) divides vagrants into three classes: first, idle and disorderly persons; second, rogues and vagabonds; and, third, incorrigible rogues.

(*o*) In general, all open lewdness, grossly scandalous, is punishable by the common law; and it appears to be an established principle, that whatever openly outrages decency, and is injurious to public morals, is a misdemeanor. (1 Russell on Crimes, 326.)

(*p*) It has been held an indictable offence for a man to undress himself on the beach and to bathe in the sea near inhabited houses, from which he might have been distinctly seen, although the houses had been recently erected, and until their erection it had been usual for men to bathe in greater numbers at the place in question. (*The King* v. *Crunden*, 2 Camp. 89.) The judge ruled, that whatever place becomes the abode of civilized men, there the laws of decency must be enforced. (*Ib.*)

(*q*) See note *f* to sec. 245.

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By-laws for regulating—

286. The Council of every County, City and Town separated from the County for Municipal purposes, may respectively pass By-laws for the following purposes:

ENGINEERS—INSPECTORS.

Appointing Engineers and Inspectors.

1. For appointing, in addition to other officers, one or more Engineers, and also one or more Inspectors of the House of Industry, also one or more Surgeons of the Gaol and other institutions under the charge of the Municipality, and for the removal of such officers; (*r*)

AUCTIONEERS.

Auctioneers.

2. For licensing, regulating and governing Auctioneers and other persons selling or putting up for sale goods, wares, merchandise or effects by public auction; and for fixing the sum to be paid for every such license, and the time it shall be in force. (*s*)

HAWKERS AND PEDLERS.

Hawkers and pedlers.

3. For licensing, regulating and governing hawkers or petty chapmen, and other persons carrying on petty trades, who have not become householders or permanent residents in the county or city, or who go from place to place, or to other men's houses, on foot, or with any animal bearing or drawing any goods, wares or merchandise for sale, or in or with any boat, vessel or other craft, or otherwise, carrying goods, wares or merchandise for sale, and for fixing the sum to be paid for a license for exercising such calling within the county or city, and the time the license shall be in force; and for providing the Township Clerks with licenses in this and the preceding section mentioned, for sale to parties applying for the same in the township under such regulations as may be prescribed in such By-law; (*t*)

Licenses for.

FERRIES.

Ferries, with assent of Governor-In-Council.

4. For regulating Ferries between any two places in the Municipality; and establishing the rates of ferriage to be

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(*r*) The officers whose appointment is authorised are:

1. Engineers.
2. Inspectors of Houses of Industry.
3. Surgeons of Gaols.

(*s*) From the earliest times, a duty as a source of revenue has been placed on auctioneers. The license is generally an annual one.

(*t*) In England, statutes were passed at an early period for the regulation of hawkers, pedlers, and petty chapmen (8 & 9 Wm. III. cap. 25; 9 & 10 Wm. III. cap. 25; 29 Geo. III. cap. 26); and in Upper Canada as early as 1816. (56 Geo. III. cap. 34.)

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taken thereon; but no such By-law as to ferries shall have effect until assented to by the Governor-in-Council. (*u*)

When there is no by-law.

287. Until the Council of the County or City pass a By-law regulating such Ferries, and in the cases of Ferries not between two places in the same Municipality, the Governor by Order in Council may from time to time regulate such ferries respectively and establish the rates to be taken thereon, in accordance with the Statutes in force relating to Ferries. (*a*)

By-laws may be made by Cities and Counties for

288. The Council of every County, City and Town separated from the County for Municipal purposes, may pass By-laws for the following purposes:

LANDS FOR GRAMMAR SCHOOLS.

Purchase of lands for Grammar Schools.

1. For obtaining in such part of the county, or of any city or town separated within the County, as the wants of the people may most require, the real property requisite for erecting County Grammar School-houses thereon, and for other Grammar School purposes, and for preserving, improving and repairing such School-houses, and for disposing of such property when no longer required; (*b*)

AIDING GRAMMAR SCHOOLS.

Aiding such school.

2. For making provisions in aid of such Grammar Schools as may be deemed expedient; (*c*)

(*u*) *Ferries.*—See sec. 221, and notes thereto.

(*a*) See sec. 221 and notes thereto.

(*b*) In 1807, an appropriation was made by the Legislature for the support of a "public school" "in each and every district" of Upper Canada, to be kept in places named. (47 Geo. 3, cap. 6.) This act was repealed, in 1853, by an act intituled "An Act to amend the law relating to Grammar Schools." (16 Vic. cap. 186, sec. 17.) The latter enacted that the Grammar Schools then existing should be continued at the places where they were respectively held, but authorized the Board of Trustees of each such school to change the places. (*Ib.* sec. 15.) As to Grammar Schools established after 14th June, 1853, the places may be changed by the County Council of the County within which the school is established. (*Ib.*) The Trustees are also authorized in certain cases to surrender to the Crown lands unsuitable for school sites, with a view to other sites. (18 Vic. cap. 121.) The Legislature, in 1858, made a grant for the establishment of a model grammar school. (18 Vic. cap. 132.)

(*c*) The Council of each County, City, Township, Town, or Incorporated Village is authorized by Con. Stat. U.C. cap. 63, sec. 16, from time to time to levy and collect, by assessment, such sum or sums of money as it may deem expedient to purchase the site or sites, or to rent, build, repair, furnish, warm and keep in order a grammar school house or houses, for providing the salary of the teacher or teachers, and all other necessary expenses of such county grammar school or schools. (Sec. 16.)

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PUPILS COMPETING FOR UNIVERSITY PRIZES.

Grammar school pupils competing for University prizes.

3. For making a permanent provision for defraying the expense of the attendance at the University of Toronto, and at the Upper Canada College and Royal Grammar School there, of such of the pupils of the Public Grammar Schools of the county as are unable to incur the expense, but are desirous of, and in the opinion of the respective Masters of such Grammar Schools, possess competent attainments for competing for any Scholarship, Exhibition or other similar Prize, offered by such University or College; (*d*)

Attendance at Grammar Schools.

4. For making similar provision for the attendance at any County Grammar School, for like purposes of Pupils of Common Schools of the County; (*e*)

ENDOWING FELLOWSHIPS.

Endowing Fellowships.

5. For endowing such Fellowships, Scholarships or Exhibitions, and other similar Prizes, in the University of Toronto, and in the Upper Canada College and Royal Grammar School there, for competition among the Pupils of the Public Grammar Schools of the County, as the Council deems expedient for the encouragement of learning amongst the youth thereof. (*f*)

PROVISIONS APPLICABLE TO COUNTIES ONLY.

Extent of certain sections to—

289. The following sections, numbered from two hundred and ninety to two hundred and ninety-four, apply to Counties only. (*g*)

SEPARATE IMPROVEMENTS BY UNITED COUNTIES.

Enabling one of United Counties to raise money for improvements.

290. The Councils of United Counties may make appropriations and raise funds, to enable either county separately to carry on such improvements as may be required by the inhabitants thereof. (*h*)

(*d*) The provision to be made may be a permanent one. But it must not be for attendance at any other institution than that of the University of Toronto and Upper Canada College and Royal Grammar School.

(*e*) None are entitled to receive the benefit of the provision unless those who are themselves unable to incur the expense.

(*f*) Fellowships, Scholarships, or Exhibitions, endowed under this clause, are to be for competition among the pupils of the public Grammar Schools of the County.

(*g*) See note *f* to sec. 245.

(*h*) Such appropriations, &c., to be subject to all formalities and regulations or appropriations made for the use of the United Counties (Sec. 292.)

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291. Whenever any such measure is brought under the notice of the Council of any United Counties, none but the Reeves and Deputy Reeves of the County to be affected by the measure shall vote; except in case of an equality of votes, when the Warden, whether a Reeve or Deputy Reeve of any portion of the County to be affected by the measure or not, shall have the casting vote. (*i*)

Reeves of the County interested only to vote for.

Exception

292. In all other respects, all the provisions of this Act giving such privileges and making provision for the payment of the amounts appropriated, whether to be borrowed upon a loan or to be raised by direct taxation, shall be adhered to. (*j*)

Provisions of this Act for repayment to apply.

293. The Treasurer of the United Counties shall pay over all sums so raised and paid into his hands by the several Collectors, without any deduction or percentage. (*k*)

Treasurer to pay over moneys, without deduction.

294. The property to be assessed for the purposes contemplated in the four last preceding sections of this Act, shall be the same as the property assessed for any other county purpose, except that any sum to be raised for the purposes of one county only, or for the payment of any debt contracted for the purposes of one county only, shall be assessed and levied solely upon property assessed in that county, and not upon property in any other county united with it, and any debenture that may be issued for such purposes may be issued as the debenture of the said one county only, and shall be as valid and binding upon that county as if that county were a separate Municipality, but such debenture shall be under the seal of the United Counties, and be signed by the Warden thereof. (*l*)

In such cases the property of the County interested is alone to be assessed.

(*i*) The improvements must be such as are required by the inhabitants of one of the United Counties. The desire for them may be signified to the Council of the United Counties, by the Reeves, &c., of the County to be affected When brought before the notice of the Council, composed as it will be of Reeves and Deputy Reeves of the United Counties, none except the Reeves and Deputy Reeves of the County to be affected by the measure are to vote. Provision is also made for the casting vote of the Warden, whether a Reeve from such county or not.

(*j*) See sec. 225 *et seq.*

(*k*) It is not said to whom the Treasurer is "to pay over;" but it is apprehended only to persons directly entitled to receive, such as contractors, &c., for work done.

(*l*) This is for the purposes intended, to effect as it were a separation *pro tanto* of United Counties without severing the Union.

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PROVISIONS APPLICABLE TO CITIES, TOWNS AND INCORPORATED VILLAGES.

Extent of section 295.

295. The following section applies to the following Municipalities: (*m*)

1. Cities,
2. Towns, and
3. Incorporated Villages.

By-laws may be made—

296 The Council of every City, Town and Incorporated Village (*n*) may respectively pass By-laws (*o*) for the following purposes:

HARBOURS, DOCKS, &c.

For the cleanliness of Wharves, docks, &c.

1. For regulating or preventing the encumbering, injuring or fouling, by animals, vehicles, vessels or other means, of any public wharf, dock, slip, drain, sewer, shore, bay, harbour, river or water (*p*)

For removal of door steps, &c.

2. For directing the removal of door steps, porches, railings, or other erections, or obstructions projecting into or over any wharf, dock, slip, drain, sewer, bay, harbour, river or water or the banks or shores thereof, at the expense of the proprietor or occupant of the property connected with which such projections are found; (*q*)

Wharves, docks, &c.

3. For making, opening, preserving, altering, improving and maintaining public wharves, docks, slips, shores, bays, harbours, rivers or waters and the banks thereof; (*r*)

For regulating harbours &c.

4. For regulating harbours; for preventing the filling up or encumbering thereof; for erecting and maintaining the necessary beacons, and for erecting and renting wharves, piers and docks therein and also floating elevators, derricks,

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(*m*) See note *f* to sec. 245.

(*n*) Counties are not named, and of course are not empowered to pass by-laws for the purposes mentioned.

(*o*) *By-laws.*—See note *l* to sec. 190.

(*p*) The clause is restricted to *public* wharves, docks, &c. *Private* wharves, &c., owned by private companies, are in such matters generally regulated by the owners. In 1853, an act was passed which provides for the formation of companies for the construction of piers, wharves, dry-docks, &c. (16 Vic. cap. 124; Con. Stats. U. C. cap. 50.)

(*q*) The power is to do more than to cause the projections to be removed; for it is to direct the removal "at the expense of the proprietor or occupant of the property connected with which such projections are found."

(*r*) Here, as above, the power is restricted to *public* wharves, &c.

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cranes and other machinery suitable for loading, discharging or repairing vessels; for regulating the vessels, crafts and rafts arriving in any harbour; and for imposing and collecting such reasonable harbour dues thereon as may serve to keep the harbour in good order, and to pay a Harbour Master; (*s*)

WATER.

5. For establishing, protecting and regulating public wells, reservoirs and other conveniences for the supply of water, and for making reasonable charges for the use thereof; and for preventing the wasting and fouling of public water; (*t*) For supplying water, &c.

MARKETS.

6. For establishing markets; (*u*) Markets.

7. For regulating all markets established and to be established; the places however already established as markets in such Municipality, shall continue to be markets, and shall shall retain all the privileges thereof until otherwise directed by competent authority; and all market reservations or appropriations heretofore made in any such Municipality, shall continue to be vested in the Corporation thereof; (*v*) For regulating markets. Old markets continued.

(*s*) This sub-section only authorizes the imposition of reasonable rates on vessels and other craft, for the purpose of cleaning and repairing harbours and paying a harbour-master, and does not sanction the levying of such duties for the revenue purposes of the Municipality to which the harbour belongs. (*In re Campbell and the Corporation of the City of Kingston*, 14 U. C. C. P. 285.) There is a general act for the formation of companies for the construction of harbours (Con. Stats. U. C. cap. 50.) The harbour of Toronto is under the control of commissioners. (13 & 14 Vic. cap. 80.)

(*t*) So here it may be said that the sub-section only authorizes the making of reasonable charges for the use of water, and does not sanction the making of such charges for the purposes of revenue. There is also a general act providing for the formation of incorporated Joint Stock Companies for supplying cities, towns, and villages with water. (Con. Stats. Can. cap. 65.)

(*u*) The *establishment* of public marts or places of buying and selling, such as markets and fairs, with the tolls thereunto belonging, is enumerated by Blackstone as one of the Royal prerogatives. In Upper Canada it is frequently exercised as to fairs.

(*v*) The power is to regulate *all* markets established, apparently including those established by the Crown as well as those established by Municipal authority. Regulation must of necessity include the appropriation of one or more parts of the market for one purpose and other part or parts for other purposes; of providing that free passage through the market be kept open for ready access to shops, stalls, or other places where different commodities are exposed for sale. (Per Draper, C. J., *in Kelly and the Corporation of the City of Toronto*, 23 U. C. Q. B. 426.)

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Regulating vending in streets.

8. For preventing or regulating the sale by retail in the public streets, of any meat, vegetables, fruit or beverages; (*w*)

Vending in open air.

9. For preventing or regulating the buying and selling of articles or animals exposed for sale or marketed; (*x*)

Sale of Butcher's meat.

10. For regulating the place and manner of selling and weighing butcher's meat, fish, hay, straw, fodder, wood, and lumber; (*y*)

Preventing forestalling.

11. For preventing the forestalling, regrating or monopoly of market grains, meats, fish, fruits, roots, vegetables, poultry and dairy products; (*z*)

Regulating Hucksters.

12. For preventing and regulating the purchase of such things by hucksters or runnners living within the Municipality, or within one mile from the outer limits thereof; (*a*)

Measuring, Weighing, &c.

13. For regulating the mode of measuring or weighing (as the case may be) of lime, shingles, laths, cordwood, coal and other fuel; (*b*)

(*w*) A by-law enacting "that no butcher or other person shall cut up or expose for sale any fresh meat in any part of the city except in the shops and stalls in the public markets, or at such places as the Standing Committee on Public Markets may appoint," was held good. (*Ib.*) But a by-law enacting "that no person should expose for sale any meat, fish, poultry, eggs, butter, cheese, grain, hay, straw, cordwood, shingles, lumber, flour, wool, meal, vegetables, or fruit (except wild fruit), hides or skins, within the town, at any place but the public market, without having first paid the market-fee thereon as therein provided, except all hides and skins from animals slaughtered by the licensed butcher of the Corporation holding a stall in the market," was held bad. (*In re Fennell and the Corporation of the Town of Guelph*, 24 U. C. Q. B. 238.) Also, "that meat, fish, *poultry, eggs, cheese, grain*, hay, straw, cordwood, *shingles*, lumber, *flour, wool, meal, vegetables* or *fruit* (except wild fruit), should not be exposed for sale within the Municipality except in the market, before 12 o'clock, noon," was held bad as to the articles mentioned in italics. (*Ib.*)

(*x*) See preceding note.

(*y*) See same.

(*z*) A by-law, "That before 10 a.m. during May, June, July and August no huckster, butcher, dealer, trader, runner, agent or retailer, or any other person purchasing for export or to sell again, should buy, bargain for, engage, or offer to buy any article of household consumption brought to the market, excepting pork, grain, flour, meal or wool," was, except to hucksters and runners, held bad. (*In re Fennell and the Corporation of the Town of Guelph*, 24 U. C. Q. B. 238.)

(*a*) See note *z*.

(*b*) The power to regulate the mode of weighing or measuring articles specified (as the case may be), lime, shingles, laths, cordwood, coal and other fuel, would perhaps, if there were nothing more, exclude the idea of power to regulate the mode of weighing or selling articles

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14. For imposing penalties for light weight or short count or short measurement in anything marketed; (*c*) Penalties for light weight.

15. For regulating all vehicles, vessels and other things in which anything is exposed for sale or marketed, and for imposing reasonable duty thereon, and establishing the mode in which it shall be paid; (*d*) Regulating vehicles used in market vending.

16. For regulating the assize of bread, and preventing the use of deleterious materials in making bread; and for providing for the seizure and forfeiture of bread made contrary to the By-law; (*e*) Assize of bread, &c.

17. For seizing and destroying all tainted and unwholesome meat, poultry, fish, or other articles of food; (*f*) Tainted provisions.

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not mentioned, but by the next sub-section power is given to impose penalties "for light weight or short count, or short measurement, *in everything marketed.*" (Sub-sec. 14.)

(*c*) See preceding note.

(*d*) This does not authorize the imposition of tonnage dues on scows, crafts, rafts, railway cars, &c., coming into the Municipality merely because they contain firewood, though such firewood may have been brought into the Municipality for the purpose of being exposed or offered for sale or marketed for consumption within the Municipality. What the statute authorizes is the regulating the vehicles, vessels, &c., *in which* anything *is exposed for sale* or marketed *in any street or public place*, and for imposing a reasonable duty thereon. When the commodity is exposed for sale in any street or public place, the power to impose the duty, if it is really given, arises, and if it be intended to impose the duty on the vehicle or vessel, it must be on that in which the article is exposed for sale or marketed in any street or public place. The legislature never contemplated that, under pretence of passing a by-law to regulate markets, any Municipal Corporation should have the power of levying a tax on the general commerce of the country merely because a particular town or city happened to be the place where forwarders are in the habit of transhipping commodities from one description of craft to another, and where merchants frequently contract that certain articles in which they deal shall be delivered, in view of this very practice of transhipment. (Per Richards, C. J., *In re Campbell and the Corporation of the City of Kingston*, 14 U. C. C. P. 288.) A clause in a by-law which imposed tonnage dues on scows, crafts, rafts, railway cars, &c., coming into the city of Kingston containing firewood to be exposed or offered for sale or marketed for consumption within the city, was therefore held bad. (*Ib.*)

(*e*) The assize of bread has been from the earliest time deemed necessary, and from time to time made by some local Municipal authority.

(*f*) This is a most necessary and useful provision, and one which in large cities is often enforced.

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Rent of market stalls.

18. For selling, after six hours' notice, butcher's meat distrained for rent of market-stalls; (*g*)

NUISANCES.

Bathing.

19. For preventing or regulating the bathing or washing the person in any public water in or near the Municipality; (*h*)

Abatement of nuisances.

20. For preventing and abating public nuisances; (*i*)

Privy vaults

21. For preventing or regulating the construction of privy vaults; (*j*)

Vacant lots.

22. For causing vacant lots to be properly enclosed; (*k*)

Slaughter Houses, &c.

23. For preventing or regulating the erection or continuance of slaughter houses, gas works, tanneries, distilleries or other manufactories or trades which may prove to be nuisances; (*l*)

(*g*) The relation of landlord and tenant at a rent certain of a corporeal hereditament, gives the right of distress at common law; but at common law there was no right to sell a distress which was looked upon as a mere pledge for payment of rent. The statute 2 W. & M. sess. 1, cap. 5, sec. 2, which provided that after the goods distrained have been appraised, the landlord "shall and may lawfully sell the goods and chattels so distrained for the best price that can be gotten for the same," &c., but at the same time provided that the sale should not be made until after the expiration of five days from the seizure. This restriction in the case of butchers' meat is, for obvious reasons, removed, and power given to sell "after six hours' notice."

(*h*) See note *p* to sub-sec. 10 of sec. 284.

(*i*) A nuisance has been described as any thing that works hurt, inconvenience or damage. Nuisances are of two kinds — public or common nuisances, which affect people generally; and private nuisances, which may be defined as any thing done to the hurt of the lands, tenements or hereditaments of another. (1 Russ. Crimes, 817.) Private nuisances are generally remedied by civil action. Public nuisances are offences against the public order and economical regimen of the State, being either the doing of a thing to the annoyance of all the Queen's subjects, or the neglecting to do a thing which the common good requires. But the annoyance or neglect must be of a real and substantial nature, and the fears of mankind, though they may be reasonable, will not create a nuisance. Offensive trades or manufactures, of which examples are given in the following subsections, may be public nuisances.

(*j*) See note *i*.

(*k*) "Vacant lots of *land*" are here intended, though not so expressed, and which in cities and towns are often made receptacles of nuisances. Hence the power to direct them "to be properly enclosed."

(*l*) See note *i* above.

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24. For preventing the ringing of bells, blowing of horns, shouting and other unusual noises, in streets and public places; (*m*) Tumultuous noises.

25. For preventing or regulating the firing of guns or other fire arms; and the firing or setting off of fire balls, squibs, crackers or fire works, and for preventing charivaries and other like disturbances of the peace; (*n*) Firing guns, &c.

26. For preventing immoderate riding or driving in highways or streets; for preventing the leading, riding or driving of horses or cattle upon side-walks or other places not proper therefor; (*o*) Furious driving.

27. For preventing persons in streets or public places from importuning others to travel in or employ any vessel or vehicle, or go to any tavern or boarding-house, or for regulating persons so employed; (*p*) Importuning travellers.

PUBLIC HEALTH.

28. For providing for the health of the Municipality and against the spreading of contagious or infectious diseases; (*q*) Public health.

INTERMENTS.

29. For regulating the interment of the dead, and for preventing the same taking place within the Municipality; (*r*) Interments.

30. For directing the keeping and returning of bills of mortality; and for imposing penalties on persons guilty of default; (*s*) Bills of mortality.

LICENSES.

31. For regulating and licensing the owners of livery stables and of horses, cabs, carriages, omnibuses and other vehicles used for hire; for establishing the rates of fare to be taken by the owners or drivers; and for enforcing payment thereof; (*t*) Licensing cabs, &c.

(*m*) See note *i* above.

(*n*) See note *i* above.

(*o*) No person is allowed to race with or drive furiously any horse or other animal, or shout or use any blasphemous or indecent language, upon any highway. (Con. Stats. U. C. cap. 56, sec. 5.)

(*p*) That against which this sub-section is directed is the importuning *in the streets or public places*. Power is given either to prevent it, or regulate it when permitted.

(*q*) See sec. 248.

(*r*) The Council of every city, town, and township, is under certain restrictions authorized to accept or purchase land for public cemeteries, as well within as without the Municipality. (Section 269, sub-section 3.)

(*s*) See preceding note.

(*t*) Where the Legislature intended to give power to license as well as to regulate, it has said so. Nothing is said as to licensing

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GUNPOWDER.

Gunpowder, care of.

32. For regulating the keeping and transporting of gunpowder and other combustible or dangerous materials; for regulating, and providing for the support by fees, of magazines for storing gunpowder belonging to private parties; for compelling persons to store therein; for acquiring land, as well within as without the Municipality, for the purpose of erecting powder magazines, and for selling and conveying such land when no longer required therefor; (*u*)

FIRES.

Fire Companies, &c.

33. For appointing Fire Wardens, Fire Engineers and Firemen, and promoting, establishing and regulating fire-companies, hook-and-ladder companies, and property-saving companies. (*v*)

Medals and rewards to, &c.

34. For providing medals or rewards for persons who distinguish themselves at fires; and for granting pecuniary aid or otherwise assisting the widows and orphans of persons who are killed by accident at such fires;

Fire in stables, &c.

35. For preventing or regulating the use of fire or lights in stables, cabinet makers' shops, carpenters' shops, and combustible places;

Dangerous manufactures;

36. For preventing or regulating the carrying on of manufactories or trades dangerous in causing or promoting fire;

Stoves, chimneys, &c.

37. For preventing, and for removing, or regulating the construction of any chimney, flue, fire place, stove oven, boiler or other apparatus or thing which may be dangerous in causing or promoting fire;

Size and cleaning chimneys, &c.

38. For regulating the construction of chimnies as to dimensions and otherwise; and for enforcing the proper cleaning of the same;

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butchers, and a by-law providing "That all persons exercising the trade of a butcher within the Municipality should be licensed each year as provided, the fee for each license to be $5," was held to be bad. (*In re Fennell and the Corporation of the Town of Guelph*, 24 U. C. Q. B. 238.)

(*u*) Erecting powder mills or keeping gunpowder near a town has been held to be a nuisance at common law, punishable by indictment or information. (*The King* v. *Taylor*, 2 Str. 1167.) The English Act 12 Geo. III. cap. 61, reduces into one act and repeals all former acts relative to the making, keeping and carrying of gunpowder.

(*v*) This and following sub-sections to 46, inclusive, are intended to prevent accidents by fire, and are so plain in their language and meaning as to render it unnecessary to make note or comment on them.

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39. For regulating the mode of removal and safe keeping of ashes; Ashes.

40, For regulating and enforcing the erection of party walls; Party walls.

41. For compelling the owners and occupants of houses to have scuttles in the roofs thereof, and stairs or ladders leading to the same. Ladders to houses.

42. For causing buildings and yards, to be put in other respects into a safe condition to guard against fire or other dangerous risk or accident; Buildings and yards, condition of.

43. For requiring the inhabitants to provide so many fire buckets in such manner and time as may be prescribed; and for regulating the examination of them; and the use of them at fires; Fire buckets.

44. For authorizing appointed officers to enter at all reasonable times upon any property subject to the regulations of the Council, in order to ascertain whether such regulations are obeyed, or to enforce or carry into effect the same; Inspection of premises.

45. For making regulations for suppressing fires, and for pulling down or demolishing adjacent houses or other erections, when necessary to prevent the spreading of fire; Suppression of fires.

46. For regulating the conduct, and enforcing the assistance, of the inhabitants present at fires; and for the preservation of property at fires; Enforcing assistance at fires.

SNOW, ICE AND DIRT.

47. For compelling persons to remove the snow, ice and dirt from the roofs of the premises owned or occupied by them, and also to remove the same from the sidewalks, street or alley in front of such premises, and for removing the same at the expense of the owner or occupant in case of his default; (*w*) Removal of snow, &c.

NUMBERING HOUSES AND LOTS.

48. For numbering the houses and lots along the streets of the Municipality, and for affixing the numbers to the houses, Numbering houses, &c.

(*w*) People are not in the absence of a municipal by-law or regulation on the subject compelled to keep the roofs of their houses clear of snow, or to detain the snow on the roofs so that it cannot slide from them into the street. (Per Robinson, C. J., in *Lazarus* v. *The Corporation of the City of Toronto*, 19 U. C. Q. B. 13.) There may be in a particular case something so evidently faulty in the construction of a roof as to make it more likely to occasion accidents from this cause than roofs in general are, but such to be actionable must be alleged and proved. (*Ib.*)

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buildings or other erections along the streets, and for charging the owner or occupant of each house or lot with the expense incident to the numbering of the same; (*x*)

Record of streets, numbers boundaries, &c.

49. For keeping (and every such Council is hereby required to make and keep) a record of the streets and numbers of the houses and lots numbered thereon respectively, and entering thereon, and every such Council is hereby required to enter thereon, a division of the streets with boundaries and distances for public inspection; (*y*)

DRAINAGE.

Ascertaining levels.

50. For ascertaining and compelling owners, tenants and occupants to furnish the Council with the levels of the cellars heretofore dug or constructed or which may hereafter be dug or constructed along the streets of the Municipality, such levels to be with reference to a line fixed by the By-laws; (*z*)

(*x*) This in large cities, towns or incorporated villages is not only a convenience but a necessity.

(*y*) It is not left optional with but made imperative upon the councils of cities, towns and incorporated villages, to keep a record of the streets and numbers of the houses, &c.

(*z*) A city, town or incorporated village corporation would act judiciously in insisting on having drains made under the direction of their officers and by their own workmen and contractors, instead of the private proprietors, for it would not do to allow all persons to break into a main sewer and make drains at their discretion. Besides the inconvenience, the health of the community would suffer from such a course, for the nuisance occasioned by defective drainage may often give rise to a wide spread evil, injuring many more than the persons on whose premises the cause of the nuisance exists. It seems a necessary policy, therefore, for such a corporation to keep the matter in their own hands. But then if the corporation does for such good reasons prevent proprietors from making the drains they require, and oblige them to have them done by the corporation engineer and contractors, it is manifestly just and proper that the corporation should see that the work is done as it ought to be, (per Robinson, C. J., in *Reeves* v. *The Corporation of the City of Toronto*, 21 U. C. Q. B. 160,) where a drain was so unskilfully constructed by the corporation contractors as not to carry off water, but to carry filth from the main sewer into plaintiff's cellar, which for months he had endured, it was held that he was entitled to sue the corporation for the recovery of substantial damages, though no by-law for the making of the drain was proved. (*Ib.*) So if in the construction of a drain by corporation contractors quantities of earth be thrown up and permitted to continue, so that in times of rain, mud and water were driven on plaintiff's messuage, he was held entitled to sue the corporation for damages. (*Farrell* v. *The Mayor and Town Council of the Town of London*, 12 U. C. Q. B. 347; see also *Perdue* v. *The Corporation of the Township of Chinguacousy*, 25 U. C. Q. B. 61.)

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51. For compelling to be deposited with an officer, to be named in the By-law, before commencing the erection of any building, a ground or block plan of such building with the levels of the cellars and basements thereof with reference to a line fixed by the By-law; (*a*) Block plans of buildings.

52. For regulating the construction of cellars, sinks, water-closets, privies and privy-vaults, and the manner of draining the same; (*b*) Cellars, sinks &c.

53. For compelling or regulating the filling up, draining, clearing, altering, relaying and repairing of any grounds, yards, vacant lots, cellars, private drains, sinks, cess-pools and privies; and for assessing the owners or occupiers of such grounds or yards, or of the real estate on which the cellars, private drains, sinks, cesspools and privies are situate, with the cost thereof if done by the Council on their default; (*c*) Filling in hollow places, drains &c.

54. For making any other regulations for sewerage or drainage that may be deemed necessary for sanitary purposes; (*d*) Sewerage and drainage

55. For charging all persons who own or occupy property which is drained into a common sewer or which by any By-law Charging rent for sewers.

(*a*) See preceding note.

(*b*) See same.

(*c*) The statute refers as well to sewers, &c., constructed, as to be constructed (*In re McCutchon and the Corporation of the City of Toronto*, 22 U. C. Q. B. 613) and though authorizing the passing of a by-law to compel drainage, couples it with a power to assess the cost thereof, if done by the Council, on the owner or occupier, in default—thus pointing out how "the compelling" is to be carried out. (*Ib.*) The charge, moreover, if the work be done by the Corporation, is a personal charge and not a charge on the land, (*Morse* v. *Hynes*, 22 U. C. Q. B. 107) and so not to be enforced by the same means as ordinary assessments. (*In re McCutchon and the Corporation of the City of Toronto*, 22 U. C. Q. B. 613.) A clause of a by-law requiring that "all grounds, yards, vacant lots *or other properties* abutting on any street should be drained," was held valid. (*In re McCutchon and the Corporation of the City of Toronto*, 22 U. C. Q. B. 613.) The sixth section of a by-law requiring all grounds not already drained abutting on any street with a common sewer, to be drained into the same within fourteen days from the advertising of the by-law for one week—the seventh section imposing a penalty on any one of not less than $1 nor more than $10 for each month he should omit to do so—and the eighth providing for enforcing payment by distress or imprisonment, not exceeding thirty-one days, were quashed as illegal. (*Ib.*) A subsequent by-law added to the eighth section above mentioned a proviso, that any person thereby required to construct a drain, who should not do so but be willing to pay the same rent as if he were using the sewer, should be exempt from penalties, was also quashed. (*Ib.*)

(*d*) See note *z* above.

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of the Council is required to be drained into such sewer with a reasonable rent for the use of the same; and for regulating the time or times and manner in which the same is to be paid; (*e*)

Regulating transient traders.

56. For licensing, regulating and governing transient traders and other persons who occupy places of business in the city or town for uncertain periods less than one year, and whose names have not been duly entered in the assessment rolls for the then current year; (*f*)

PROVISIONS APPLICABLE TO CITIES AND TOWNS.

Certain extent of sections.

297. The following sections, numbered two hundred and ninety-eight, two hundred and ninety-nine, and three hundred apply to the following Municipalities: (*g*)

1. Cities. | 2. Towns.

Coroners.

Appointment of.

298. One or more Coroners shall be appointed for every Incorporated City or Town. (*h*)

Intelligence Offices.

By-laws for—

299. The Council of every City and Town may respectively pass By-laws:

Licensing Intelligence offices.

1. For licensing suitable persons to keep Intelligence Offices for registering the names and residences of, and giving information to, or procuring servants for, employers in want of domestics or labourers, and for registering the names and residences of, and giving information to, or procuring employ-

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(*e*) It would seem that the owner or occupier of the property may legally be allowed to commute for the annual rent by payment of a fixed sum in gross. (*In re McCutchon and the Corporation of the City of Toronto*, 22 U. C. Q. B. 613.) As to the meaning of the words "owner" and "occupier," see *Peak* v. *The Waterloo and Seaforth Local Board of Health*, 9 L. T., N. S. 338.

(*f*) See note *t* to sub-sec. 31, above.

(*g*) See note *f* to sec. 245.

(*h*) It is not said by whom the appointment is to be made, but it is understood by the Executive. The office of Coroner is of equal antiquity with that of Sheriff. (Mirror, cap. 1, sec. 3.) The authority of a Coroner is judicial and ministerial: *judicial* where one comes to a violent death, or a house or building is destroyed by fire in a city, town or village, in which cases he is to take inquest (4 Inst. 371; Con. Stat. C. c. 88); *ministerial* where the Coroner executes the Queen's writs on exception to the sheriff, as by his being a party to a suit, or of kin to either of the parties, &c. (*Ib.*) Coroners of *counties* are, however, commonly called upon to act in a ministerial capacity.

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ment for domestics, servants and other labourers desiring employment, and for fixing the fees to be received by the keepers of such offices;

2. For the regulation of such Intelligence Offices; Regulation of.

3. For limiting the duration of or revoking any such license; Duration of license.

4. For prohibiting the opening or keeping any such Intelligence Office within the Municipality without license; Prohibition of without license.

5. For fixing the fee to be paid for such license, not exceeding one dollar for one year; (*i*) Fees for.

WOODEN BUILDINGS.

6. For regulating the erection of buildings, and preventing the erection of wooden buildings and wooden fences in specified parts of the City or Town; (*j*) Wooden buildings.

POLICE.

7. For establishing, regulating and maintaining a Police; but subject to the other provisions of this Act on that head; (*k*) A police.

INDUSTRIAL FARM—EXHIBITION.

8. For acquiring any estate in landed property within or without the City or Town for an industrial farm, or for a public park, garden or walk, or for a place for exhibitions, Industrial farm.

(*i*) The powers given are to license persons to keep intelligence offices, to regulate such offices, to limit the duration of the licenses, to prohibit the opening of any such office without license, to fix the fee for a license; each of which has a distinct meaning. (See notes to sec. 249.)

(*j*) As wooden structures are more combustible than stone or brick, the power to regulate the erection of them in cities and towns is conferred.

(*k*) The word "police" is generally applied to the internal regulations of cities and towns, whereby the individuals of any city or town, like members of a well governed family, are bound to conform their general behaviour to the rules of propriety, good neighbourhood, and good manners, and to be decent, industrious and inoffensive in their respective situations (See 4 Bla. Com. cap. 13); but the word, as here used, has a still more restricted meaning, for it is intended to apply to those paid men who in every city and town are appointed to execute police laws, and who in many respects correspond with constables of rural municipalities.

The powers given to cities and towns are,

1. To establish;
2. To regulate; and
3. To maintain a Police.

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and for the disposal thereof when no longer required for the purpose; and for accepting and taking charge of landed property, within or without the City or Town, dedicated for a public, garden or walk, for the use of the inhabitants of the City or Town;

Buildings thereon.

9. For the erection thereon of buildings and fences for the purposes of the farm, park, garden, walk or place for exhibitions, as the Council deems necessary;

Managing the same.

10. For the management of the farm, park, garden, walk or place for exhibitions and buildings; (*l*)

CHARITY.

Almshouses, and poor.

11. For establishing and regulating within the City or Town, or on the industrial farm or ground held for public exhibitions, one or more almshouses or houses of refuge for the relief of the destitute, and for granting out-of door relief to the resident poor, and also for aiding charitable institutions within the City or Town. (*m*)

300. The Council of a City or Town (*n*) may also pass By-laws:

Appointment of Corporation Surveyor.

1. For appointing any person to be the Corporation Surveyor; and the Board of Examiners of Provincial Land Surveyors for Upper Canada shall examine such person, and, if

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(*l*) The jurisdiction of a Municipal Council is in general local, that is, confined to the municipality which it represents. For some purposes, the jurisdiction extends beyond the locality. The acquirement of land for a cemetery is one such purpose (sec. 269, sub-sec. 3); land for an industrial farm, &c., is another.

Power is given,

1. To acquire any estate, &c., for a farm, &c.;
2. To erect buildings thereon, &c.;
3. To manage the same.

(*m*) Every Township Council may also make by-laws for raising money for the support of the poor resident in the township. (Sec. 279.) The poor taken notice of by the English law, which is a complete system, are,

1. Poor by impotency; as the aged or decrepid, fatherless or motherless, poor under sickness, and persons who are idiots, lunatics, lame, blind, &c.
2. Poor by casualty; such as able-bodied persons decayed or ruined by unavoidable misfortunes, or otherwise out of employment, and unable to procure employment.
3. Poor by prodigality and debauchery; also those called thriftless poor, as idle, slothful persons.

(*n*) The Councils of counties, townships and incorporated villages, are neither mentioned nor intended.

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he is found competent, shall grant to him, without the usual service, his certificate as a Deputy Provincial Surveyor, and his acts as such shall, in the town or city, while he holds the office of Surveyor thereto, have the same effect as those of any other Deputy Provincial Surveyor; (*o*)

GAS AND WATER.

Lighting with gas.

2. For lighting the Municipality, and for this purpose performing any work, and placing any fixtures that are necessary on private property; (*p*)

Laying down gas and water gas pipes.

3. For laying down Gas or Water Pipes in any street, and opening streets for the purpose; and for taking up or repairing such pipes, and for using every power and privilege given to any Gas or Water Company incorporated in the Municipality, as if the same were specially given by this Act, subject, however, to the provisions herein contained as to the erection of Gas or Water Works, and levying rates therefor; (*q*)

Gas and Water Works

4. For constructing Gas and Water Works, and for levying an annual special rate to defray the yearly interest of the expenditure therefor, and to form an equal yearly sinking fund for the payment of the principal within such time as shall not exceed thirty years, nor be less than five years; (*r*)

Estimate to be published, and notice of Poll to be held on the By-law.

Proceedings prior to taking public vote.

5. But no By-law under the last sub-section shall be passed, Firstly, until estimates of the intended expenditure have been published for one month, and notice of the time appointed for taking a poll of the electors on the proposed By-law has been published for two months, and a copy of the proposed By-law at length as the same may be ultimately passed, and a notice of the day appointed for finally considering the same in Council, have been published for three months in some newspaper in

(*o*) The Board of Examiners is composed of the Commissioner of Crown Lands and eight other competent persons, from time to time appointed by the Governor-General, and meet at the city of Toronto. (Con. Stat. Can. cap. 77, sec. 1.)

(*p*) It is necessary for Municipal Councillors to be very cautious when interfering with private property. An excess of authority may render them liable as trespassers. (See *Dennis* v. *Hughes et al.*, 8 U. C. Q. B. 444.)

(*q*) It may be made a question how far the Municipal Council of a city has, under it, the power to interfere with the privileges of incorporated companies in cities existing at the time of the passing of the act. (See sub-sec. 7; see also Con. Stat. Can. cap. 66, "respecting incorporated joint stock companies for supplying cities, towns and villages with gas and water.")

(*r*) See sec. 226, sub-sec. 3.

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the Municipality; or if no newspaper is published therein, then in some newspaper in the County in which the Municipality is situate;

Poll to be held, and majority must be in favour.

Nor, Secondly, until a poll, held in the same manner and at the same places, and continued for the same time as at elections for Councillors, a majority of the electors voting at the poll vote in favor of the By-law; (*s*)

By-law to be passed only at a special meeting, &c.

Nor, Thirdly, unless the By-law is thereafter passed at the special meeting mentioned in the published notice; (*t*)

If the By-law is rejected.

6. If the proposed By-law is rejected at such poll, no other By-law for the same purpose shall be submitted to the electors during the current year; (*u*)

If there is a Gas or Water Company for the Municipality

7. In case there be any Gas or Water Company incorporated for the Municipality, the Council shall not levy any Gas or Water rate until such Council has by By-law fixed a price to offer for the works or stock of the Company; nor until thirty days have elapsed after notice of such price has been communicated to the Company without the Company's having accepted the same, or having, under the provisions of this Act as to Arbitrators, named and given notice of an Arbitrator to determine the price, nor until the price accepted or awarded has been paid, or has been secured to the satisfaction of the Company; (*v*)

Inspection of Gas-metres.

8. The Council of a City or Town may also pass By-laws,—For providing for the inspection of Gas-metres; (*w*)

(*s*) See secs. 200, 201, 202, and notes thereto.

(*t*) The by-law is to be passed at *the* special meeting mentioned in the notice, &c.; that is, it shall not be lawful in the notice to specify one day of meeting, and to pass the by-law at another.

(*u*) The municipal year begins in January, and so far corresponds with the calendar year. If a by-law is rejected at any time in one year, it cannot be again submitted until the year following.

(*v*) The course of proceeding indicated appears to be the following:

1. If there be a gas or water company incorporated in the municipality, the Council of the municipality, before levying a gas or water rate, is by by-law to fix a price to be offered for the works or stock of the company.
2. The company, within thirty days after communication of a notice of a price, is either to accept the same or to proceed to arbitration, pursuant to sec. 353 of this act.
3. If the sum be either accepted, or a different sum awarded, the municipality, before levying the rate, is required to pay or secure that sum.

(*w*) This is an important clause, not generally known, and seldom acted upon.

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9. For providing for the appointment of three Commissioners for entering into contracts for the construction of Gas and Water works, for superintending the construction of the same, for managing the works when completed, and for providing for the election of the said Commissioners by the electors from time to time, and at such periods and for such terms as the Council may appoint by the By-law authorizing the election. (*x*)

Commissioners for erection of Gas or Water Works

PROVISIONS APPLICABLE TO CITIES ONLY.

301. The Council of every City may pass By-laws for the following purposes:

City Councils may make By-laws for certain purposes.

1. For providing the means of ascertaining and determining what real property will be immediately benefited by any proposed improvement, the expense of which is proposed to be assessed as hereinafter mentioned upon the real property immediately benefited thereby; and of ascertaining and determining the proportions in which the assessment is to be made on the various portions of the real estate so benefited; subject in every case to an appeal to the Recorder in the same manner and on the same terms, as nearly as may be, as an appeal from the Court of Revision in the case of an ordinary assessment; (*a*)

Ascertaining the property to be benefited by a local improvement.

2. For assessing and levying upon the real property to be immediately benefited by the making, enlarging or prolonging of any common sewer, or the opening, widening, prolonging or altering, macadamizing, grading, levelling, paving or planking of any street, lane, or alley, public way or place, or of any sidewalk therein, on the petition of at least two-thirds in number and one-half in value of such real property, of the owners

Assessing such property for such improvement—and in what manner.

(*x*) The electors are, it is presumed, such only as are entitled to vote at the ordinary municipal election in the municipality. (See sec. 75, *et seq.*)

(*a*) The powers conferred are to pass by-laws for the following purposes:

1. For providing the means of *ascertaining* and *determining* what real property will be immediately benefited, &c.
2. For *ascertaining* and *determining* the proportions in which the assessment is to be made, &c.

Subject in every case to an appeal to the Recorder.

Neither of the Superior Courts of Law will entertain an application to set aside a by-law on a matter of fact, which according to this act, or a by-law passed under it, should be ascertained and determined by an officer of the corporation, unless perhaps fraud or corrupt conduct be imputed to such officer. (See *In re Michie and the Corporation of the City of Toronto*, 11 U. C. C. P. 379.)

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of such real property, a special rate, sufficient to include a sinking fund, for the repayment of Debentures which such Councils are hereby authorized to issue in such cases respectively, on the security of such rates respectively, to provide funds for such improvements, and for so assessing and levying the same; (*b*)

Annual rate. (1.) By an annual rate in the dollar on the real property so benefited, according to the value thereof, exclusive of improvements;

Regulating time of payment, &c. 3. For regulating the time or times and manner in which the assessments to be levied under this section are to be paid, and for arranging the terms on which parties assessed for local improvements may commute for the payment of their proportionate shares of the cost thereof in principal sums;

If funds furnished by parties. 4. For effecting any such improvement as aforesaid with funds provided by parties desirous of having the same effected. (*c*)

Under what conditions such improvements may be undertaken. **302.** No such local improvement as aforesaid shall be undertaken by the Council of any City, except under a By-law passed in pursuance of the fourth sub-section of the preceding section, otherwise than on the petition of two-thirds in number and one-half in value of real property to be directly benefited thereby, of the owners of such real property,—the number of such owners and the value of such real property having been first ascertained and finally determined in the manner and by the means provided by By-law in that behalf; and if the contemplated improvement be the

As to sewers. construction of a common sewer, having a sectional area of more than four feet, one-third of the cost thereof shall also

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(*b*) The local improvements contemplated are,

1. Making,
2. Enlarging,
3. Prolonging,

} *any* common sewer.

1. Opening,
2. Widening.
3. Prolonging.
4. Altering,
5. Macadamizing.
6. Grading.
7. Levelling.
8. Paving.
9. Planking.

} *any* street, lane, alley, public way, place, or sidewalk.

(*c*) Where funds are provided by parties desirous of having the local improvement, of course there will be no necessity for levying or assessing the rate contemplated by the previous sub-sections.

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first be provided for by the Council of the City, by By-law for borrowing money, which every such Council is hereby authorized to pass for such purpose, or otherwise. (*cc*)

303. It shall not be essential to the validity of any By-law passed in virtue of the three hundred and first section of this act, that it be in accordance with the restrictions and provisions contained in the two hundred and twenty-sixth section of this act; (*d*) but no such By-law shall be valid which is not in accordance with the following restrictions and provisions: (*e*) What conditions shall be requisite to the validity of the By-laws.

1. The By-law shall name a day in the financial year in which the same is passed when it shall take effect; (*f*) Day for By-law taking effect.

2. The whole of the debt and the obligations to be issued therefor shall be made payable in twenty years at furthest from the day on which such By-law takes effect; (*g*) Period for payment.

3. The By-law shall settle an equal special rate per annum in addition to all other rates, to be levied in each year on the real property described therein, and ratable thereunder, for paying the debt and interest; (*h*) Special rate.

4. Such special rate shall be sufficient, according to the value of such real property, as ascertained and finally deter- Amount of such rate.

(*cc*) It will be observed that the number of the owners as well as the value of the real property is to be first ascertained and finally determined, in the manner and by the means provided by by-law in that behalf. The court in one case refused to entertain an application to set aside a by-law for local improvements, on the ground that the petition on which the by-law was based, was not signed by three-fourths in number and one-half in value of the owners of real property to be benefited by the local improvement, contrary to the determination of the officer of the Corporation in that behalf. (*In re Michie and the Corporation of the City of Toronto*, 11 U. C. C. P. 379.)

(*d*) See section 226, and notes thereto.

(*e*) *i. e.* If at variance with the resolutions and provisions mentioned, and moved against in sufficient time, it would in all probability be set aside.

(*f*) The date on which a by-law is passed does not necessarily form a part thereof, but it would be well that the By-law should in the body of it name the day. (*In re Michie and the Corporation of the City of Toronto*, 11 U. C. C. P. 379.)

(*g*) Where by a part of the by-law the debentures were made payable at a date more than twenty years from the day in which the By-law took effect, that part of the by-law was quashed. (*Ib.*)

(*h*) An ordinary lease, under the statute, containing a covenant "to pay taxes," was held to cover a special rate created by a corporation by-law, as well as all other Municipal taxes. (*Ib.*)

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mained in virtue of this Act, to discharge the debt and interest when respectively payable, irrespective of any future increase in the value of such real property, and also irrespective of any income from the temporary investment of the sinking fund, or of any part thereof; (*i*)

What the By-law must recite.

5. The By-law shall recite:

Amount and object.

(1) The amount of the debt which such By-law is intended to create, and, in some brief and general terms, the object for which it is to be created;

Annual amount.

(2) The total amount required by this Act to be raised annually by special rate for paying the debt and interest under the By-law;

Value of property rated.

(3) The value of the whole real property ratable under the By-law as ascertained and finally determined as aforesaid;

Special rate.

(4) The annual special rate in the dollar or per foot frontage, or otherwise, as the case may be, for paying the interest and creating an equal yearly sinking fund for paying the principal of the debt, according to the foregoing provisions of this Act;

Security for debt.

(5) That the debt is created on the security of the special rate settled by the By-law, and on that security only. (*j*)

Debentures under sections 301 to 303 to be specially distinguished.

304. Every Debenture issued under the sections of this Act numbered three hundred and one to three hundred and three inclusive, shall bear on its face the words "Local Improvement Debenture," and shall contain a reference, by date and number, to the By-law under which it is issued, and also a statement of its being issued in virtue of this Act. (*k*)

Section 227 not to apply.

305. The two hundred and twenty-seventh section of this Act shall not apply to any By-law passed in virtue of the four last preceding sections of this Act. (*l*)

Certain sections not to apply to certain works.

306. Nothing contained in the sections of this Act, numbered three hundred and one to three hundred and four shall shall be construed to apply to any work of ordinary repair or

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(*i*) See sec. 226 and notes thereto.

(*j*) See sub-sec. 6 of sec. 226 and notes thereto.

(*k*) See sec. 213 *et seq.* and notes thereto.

(*l*) *i. e.*, Not be submitted to the electors for their assent. The petition of two thirds in number and one half in value of the owners of the real property intended to be benefited, as required by sec. 302, renders the submission of the by-law for the assent of the rate-payers concerned, unnecessary. The remaining one-third in number and one half in value of the rate-payers, are bound by the petition of the majority, and subject to the consequences of their act.

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maintenance; and every common sewer made, enlarged, or prolonged, and street, lane, alley, public way or place, and sidewalk therein, once made, opened, widened, prolonged, altered, macadamized, paved or planked under the said sections of this Act, shall thereafter be kept in a good and sufficient state of repair at the expense of the City generally. (*m*)

PROVISIONS APPLICABLE TO POLICE VILLAGES ONLY.

Extent of sections 308 to 314.

307. The following sections numbered from three hundred and eight to three hundred and fourteen apply to Police Villages only; (*n*)

INSPECTING TRUSTEE.

Appointment of Inspecting Trustees.

308. The Trustees of every Police Village, or any two of such Trustees shall, by a writing under their hands to be filed with the Clerk of the Township, or one of the Townships in which the Village is situate, appoint one of their number to be Inspecting Trustee. (*o*)

Filling vacancies.

309. In case of any vacancy in the office of a Police Trustee, by death or otherwise, the remaining Trustee or Trustees shall, by writing to be filed with such Clerk as aforesaid, appoint a Trustee or Trustees to supply the vacancy. (*p*)

NEGLECT OF DUTY BY TRUSTEES.

Penalty for breach of duty.

310. Any Police Trustee who wilfully neglects or omits to prosecute an offender at the request of any resident householder of the village (*q*) offering to adduce proof of an offence against the regulations of Police herein established, (*r*) or who wilfully neglects or omits to fulfil any other duty imposed on him by this Act, shall incur a penalty of five dollars. (*s*)

(*m*) It is the duty of every City, Township; Town and Incorporated Village, to keep every public road, street, bridge and highway within the Corporation in repair. (Secs. 338, 339.) The default of the Corporation so to keep in repair is a misdemeanor, punishable by fine in the discretion of the Court. (Sec. 339.) The Corporation is further civilly responsible for all damages sustained by any person, by reason of such default. (*Ib.*)

(*n*) See note *f* to sec. 245.

(*o*) The Inspecting Trustee in a Police Village holds a position similar to that of Reeve in a Township. In every Police Village there are three Trustees. (Sec. 68.) The election of Inspecting Trustee is to be by these Trustees, or by any two of them.

(*p*) The police regulations of every Police Village are enforced through Police Trustees. (Sec. 7.)

(*q*) As to what constitutes residence see note *r* to sec. 75.

(*r*) See sec. 314.

(*s*) The penalty must be sued for within ten days after offence committed. (Sec. 311.)

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Limitation of prosecutions for.

311. The penalties prescribed by the preceding section, or by that for the establishment of regulations of Police, shall be sued for within ten days after the offence has been committed or has ceased, and not subsequently. (*t*)

TRUSTEES TO SUE FOR PENALTIES.

Who to sue for penalties

312. The Inspecting Trustee, or in his absence or when he is the party complained of, one of the other Trustees, shall sue for all penalties incurred under the Regulations of Police herein established, (*a*) before a Justice of the Peace having jurisdiction in the village and residing therein, or within five miles thereof; or if there be none such, then before any Justice of the Peace having jurisdiction in the village; (*b*) and the Justice shall hear and determine such complaint in a summary manner, and may convict the offender, upon the oath or affirmation of a credible witness, and shall cause the penalty to be levied by distress and sale of the goods of the offender, and to be paid over to the path-master or path-masters of the division or divisions to which the village belongs, or to such of the said path-masters as the Trustees may direct; (*c*) and such path-master or path-masters shall apply the penalty to the repair and improvement of the streets and lanes of the village, under the direction of the Trustees. (*d*)

And before whom.

Conviction and levy of penalty.

PUBLIC HEALTH.

Trustees to be Health officers.

313. The Trustees of Every Police Village shall be Health Officers within the Police Village, under the Consolidated Statute for Upper Canada, respecting Public Health, and under any other Act that may be passed for the like purpose. (*e*)

(*t*) *Within ten days after*, &c. Where a thing is to be done within a certain number of days from or after a given day, or an act done, the general rule is, that the first day on which one act is done is to be reckoned exclusively. (*Young* v. *Higgon*, 6 M. & W. 49; see also *Gibson* v. *Muskett*, 3 Scott N. R. 429.)

(*a*) See sec. 314.

(*b*) Two parties are here described; first, the party to sue, and, secondly, the party before whom the suit is to be prosecuted.

(*c*) The proceeding had better, as much as possible, conform to the Summary Convictions Act, Con. Stat Can. cap. 103.

(*d*) The path-master, or some path-master if more than one, is to receive the penalty. When he receives it, it is his duty to apply it to the repair and improvement of the streets, &c.

(*e*) See sec. 248 and notes thereto.

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POLICE REGULATIONS.

214. The Trustees of every Police village shall execute and enforce therein the regulations following: (*f*) Regulations.

FIRE.

1. Every proprietor of a house more than one story high, shall place and keep a ladder on the roof of such house near to or against the principal chimney thereof, and another ladder reaching from the ground to the roof of such house, under a penalty of one dollar for every omission; and a further penalty of two dollars for every week such omission continues; Fires, Ladders, &c.

2. Every householder shall provide himself with two buckets fit for carrying water in case of accident by fire, under a penalty of one dollar for each bucket deficient; Fire buckets.

3. No person shall build any oven or furnace unless it adjoins and is properly connected with a chimney of stone or brick at least three feet higher than the house or building in which the oven or furnace is built, under a penalty not exceeding two dollars for non-compliance; Furnaces, &c.

4. No person shall pass a stove-pipe through a wooden or lathed partition or floor, unless there is a space of four inches between the pipe and the wood work nearest thereto; and the pipe of every stove shall be inserted into a chimney; and there shall be at least ten inches in the clear between any stove and any lathed partition or wood work, under a penalty of two dollars; Stove pipes, &c.

5. No person shall enter a mill, barn, outhouse or stable, with a lighted candle or lamp unless well enclosed in a lantern, nor with a lighted pipe or cigar, or with fire not properly secured, under a penalty of one dollar; Lights in stables, &c.

6. No person shall light or have a fire in a wooden house or outhouse unless such fire is in a brick or stone chimney, or in a stove of iron or other metal, properly secured, under a penalty of one dollar; Chimnies.

7. No person shall carry fire or cause fire to be carried into or through any Street, Lane, Yard, Garden or other Place, Securing fire carried through streets, &c.

(*f*) A Police Village is not a "Municipality" within the meaning of this act. (Sec. 422, sub-sec. 1.) Nor are the Police Trustees, like the members of Municipal Councils, a body corporate. (Sec 2.) A Police Village is in every respect of much less importance than a Municipality, such as a county, city, town, or incorporated Village. Hence it is that regulations, such as Municipal Councils may themselves ordain, are here ordained by the Legislature for police trustees. Little is left in their power or to their discretion.

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without having such fire confined in some copper, iron or tin vessel, under a penalty of one dollar for the first offence, and of two dollars for every subsequent offence;

Fires in streets.

8. No person shall light a fire in a street, lane or public place, under a penalty of one dollar;

Hay, straw, &c.

9. No person shall place Hay, Straw or Fodder, or cause the same to be placed, in a dwelling house, under a penalty of one dollar for the first offence, and of five dollars for every week the Hay, Straw or Fodder is suffered to remain there;

Ashes, &c.

10. No person, except a manufacturer of pot or pearl ashes, shall keep or deposit ashes or cinders, in any wooden vessel, box or thing not lined or doubled with sheet-iron, tin or copper, so as to prevent danger of fire from such ashes or cinders, under a penalty of one dollar;

Lime.

11. No person shall place or deposit any quick or unslaked lime in contact with any wood of a house, outhouse or other building, under a penalty of one dollar, and a further penalty of two dollars a day until the lime has been removed, or secured to the satisfaction of the inspecting trustee, so as to prevent any danger of fire;

Charcoal furnaces.

12. No person shall erect a furnace for making charcoal of wood, under a penalty of five dollars; (*g*)

GUNPOWDER.

Gunpowder.

13. No person shall keep or have Gunpowder for sale except in boxes of copper, tin or lead, under a penalty of five dollars for the first offence, and ten dollars for every subsequent offence;

Gunpowder.

14. No person shall sell Gunpowder, or permit Gunpowder to be sold, in his house, storehouse or shop, outhouse or other building, at night, under a penalty of ten dollars for the first offence, and of twenty dollars for every subsequent offence; (*h*)

NUISANCES.

Certain nuisances prohibited.

15. No person shall throw or cause to be thrown any filth, or rubbish into a street, lane or public place, under a penalty of one dollar, and a further penalty of two dollars for every week he neglects or refuses to remove the same after being notified to do so by the Inspecting Trustee, or some other person authorized by him. (*i*)

(*g*) It ought to be an object of every householder, where a number of houses are collected together, to provide against fire. It is for this reason that the Legislature, in the clauses following, is so particular as to details.

(*h*) *Gunpowder*, see sub-sec. 32 of sec. 296, and note thereto.

(*i*) *Nuisances*, see sub-sec. 19 of same section, and notes thereto.

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ROADS, BRIDGES, DRAINS, WATER-COURSES.

What constitutes Highways. (*f*)

315. All allowances made for roads by the Crown Surveyors in any Town, Township or place already laid out, or hereafter laid out; (*g*) and also all roads laid out by virtue

What shall constitute highways.

(*f*) Anciently there were but four highways in England, which were *public* and *common* highways to all the King's subjects, and through which they might pass without any toll. (*James* v. *Johnston*, 1 Mod. 231.) All others are supposed to have been made through the grounds of private persons, who had a right to prescribe tolls. (*Ib.*) Highways, in the modern sense, may, however, exist, notwithstanding the imposition of tolls, and are often constituted such by act of Parliament.

The following are made highways under the operation of this section, the origin of which is sec. 12 of stat. U. C., 50 Geo. III. cap. 1:

1. All allowances for roads made by the Crown Surveyor, &c.
2. All roads laid out by virtue of any Act of Parliament of U. C.
3. All roads whereon the public money has been expended for opening the same.
4. All roads on which statute labour hath been usually performed
5. All roads passing through the Indian lands (which is very indefinite).
6. The exception is where such roads have been already altered or may hereafter be altered according to law.

(*g*) Before the passing of the 50 Geo. III. cap. 1, the Crown was not restricted from altering the original plan of a township, although already laid out previous to making grants of lots of land therein. In the original survey, allowances for roads were of course made; and if afterwards the lots were located, described and granted in conformity thereto, it would be inferred that the allowances so made were dedicated by the Crown as public roads; but if, after survey, the Government deemed it expedient to abandon or deviate from the principles of it in the future grant of the township, no law prevented the exercise of such a right. (See *The King* v. *Allan et al.*, 2 O. S. 90; *Field* v. *Kemp*, 3 O. S. 374.) But in this respect the 50 Geo. III. cap. 1, altered the law, and it would now seem that if once a road acquires the legal character of a highway, by reason of the original survey or otherwise, it is out of the power of the Crown, by grant of the soil and freehold thereof to a private person, to deprive the public of their right to use the road. (See *The Queen* v. *The Bishop of Huron*, 8 U. C. C. P. 253; *Mountjoy* v. *The Queen*, 1 Er. & Ap. 429; *The Queen* v. *Hunt*, 16 U. C. C. P. 145.) The enactment under consideration is, in some respects, clearly prospective as well as retrospective; for its language is, "all allowances *made*, &c., in any town, township, &c., *already* laid out, or *hereafter* [to be] laid out, &c." It is said that the fact of a Government Surveyor laying out certain allowances for roads or streets in the plan of the original survey of Crown lands would be sufficient to give such roads or streets the legal character of highways, though there may have been no stakes planted on the ground to mark them out, and that they would be deemed in law highways before actually opened and used, and before statute

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of any Act of the Parliament of Upper Canada, or any roads whereon the public money has been expended for opening the same, or whereon the statute labour hath been usually performed, or any roads passing through the Indian lands, shall be deemed common and public highways, (*h*) unless where such roads have been already altered, or may hereafter be altered according to law. (*i*)

HIGHWAYS VESTED IN THE CROWN.

Highways, &c., vested in the Crown.

316. Unless otherwise provided for, the soil and freehold of every highway or road altered, amended or laid out according to law, shall be vested in Her Majesty, her heirs and successors. (*j*)

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labour or public money had been expended upon them. (Per Robinson, C. J., in *The Queen* v. *The Great Western Railway Company*, 21 U. C. Q. B. 577; see also *The Queen* v. *Hunt*, 16 U. C. C. P. 145.) Where roads, commonly called trespass roads, in unsettled parts of the country, are used, across the land of private persons, owing to the original allowances not being opened, when the allowances in process of time become opened, the right to exclusive possession of the trespass roads would appear to vest in the proprietors of the soil. (See *Borrowman* v. *Mitchell*, 2 U. C. Q. B. 155; *Dawes* v. *Hawkins*, 4 L. T. N. S. 288; *The Queen* v. *Plunkett*, 21 U. C. Q. B. 536.) But where a highway has been surveyed, and a road constructed which was intended to be on the line so surveyed, if the road be found to differ from the true astronomical line mentioned as its course on the original survey, it does not follow that the owner of the freehold is entitled to possession of the part erroneously travelled, especially if user for many years be shown, and considerable expenditure of public money. (*Prouse* v. *Glenny et al.*, 13 U. C. C. P. 560.) But roads running hither and thither, without a defined course or definite boundaries, are not to be deemed common and public highways. (*Schwinge* v. *Dowell*, 2 F. & F. 845; *Chapman* v. *Cripps*, 2 F. & F. 864.)

(*h*) Public money may mean the money of the Government, or the money of the local Municipal Corporation. Either, it is apprehended, would be public money within the meaning of this section. But it must be shown that such money was lawfully expended, and expended for opening the road. (*The Queen* v. *Hall*, C. P., M. T. 1866.) If the money afterwards expended upon it be in the nature of statute labour, that of itself would not be enough. It must be shown that the statute labour "hath been *usually* performed" thereon. (See *The Queen* v. *Plunkett*, 21 U. C. Q. B. 541; *Prouse* v. *Glenny*, 13 U. C. C. P. 560.)

(*i*) Where it was shown that the road was only travelled as a temporary substitute for the proper allowance which ran near by, and the latter was afterwards opened, the court inclined to think that the former might, within the spirit of this clause, be fairly said to have been altered when the public allowance was opened, for which it had, for mere convenience, been substituted. (*The Queen* v. *Plunkett*, 21 U. C. Q. B. 536.)

(*j*) The soil and freehold of a highway at common law, remains in the owner of the land. (*Lade* v. *Shepherd*, 2 Str. 1003; *Every* v. *Smith*,

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JURISDICTION OF MUNICIPALITIES.

317. Subject to the exceptions and provisions hereinafter contained, every Municipal Council shall have jurisdiction over the original allowances for roads, highways and bridges within the Municipality. (*k*)

Jurisdiction of Municipal Councils.

JURISDICTION RESTRICTED.

PROVINCIAL ROADS UNDER BOARD OF WORKS.

318. No Council shall interfere with any Public Road or Bridge vested as a Provincial Work in Her Majesty or in any Public Department or Board, and the Governor shall by order in Council have the same powers as to such Road and Bridge as are by this Act conferred on Municipal Councils with respect to other Roads and Bridges; (*l*) but the Governor may

Roads under Board of Works not to be interfered with.

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26 L. J. Ex. 344; *Borrowman* v. *Mitchell*, 2 U. C. Q. B. 155; *Dawes* v. *Hawkins*, 4 L. T. N. S. 288; *The Queen* v. *Plunkett*, 21 U. C. Q. B. 536.) By this section it is provided that the soil and freehold of *every* highway or road, altered, amended or laid out according to law, shall be vested in Her Majesty. By sec. 338, it is provided that *every* public public road, street, bridge or other highway shall be vested in the municipality, subject to any rights in the soil which the individuals who laid out such road, street, bridge or highway reserved. Between the two there is an apparent inconsistency. They may perhaps be reconciled by reading the section here annotated as applicable to roads laid out by public authority of some kind, and sec. 338 to roads laid out by private individuals over their own land. (Per Burns, J., in *The Corporation of the Town of Sarnia* v. *The Great Western Railway Company*, 21 U. C. Q. B. 64; *Milton et al.* v. *Duck*, Q. B., M. T. 1866.) The right of the public in either case is simply to use the road for the purpose of a highway. A user for different purposes, such as excavating soil, &c., would subject the person so using the road to an action of trespass at the suit of the owner of the freehold. (*Cox* v. *Glue*, 5 C. B. 533.) But a plaintiff cannot maintain ejectment for a portion of a public highway. (*The Corporation of the Town of Sarnia* v. *The Great Western Railway Company*, 21 U. C. Q. B. 59; *Fitzgibbon* v. *The Corporation of the City of Toronto*, 25 U. C. Q. B. 137.) As to the sale of lumber on the road allowances, see sec. 333, sub-sec. 10.

(*k*) The control of the public highways has been by the Legislature committed to the Municipal Corporations. They have, subject to the reservations in secs. 318 and 319, been entrusted with almost unlimited power of dealing with existing roads and opening new ones. (Per The Chancellor, in *Attorney-General* v. *The Nepean Road Company*, 2 Grant, 635.) The jurisdiction may be joint or exclusive (see secs. 329, 341), or joint (sec. 329). The Corporation of a county is liable to damages for neglect to keep in repair a county road or bridge (*Harrold* v. *The Corporation of the County of Simcoe and The Corporation of the County of Ontario*, 16 U. C. C. P. 48), and may maintain an action for an injury wrongfully done to a county road or bridge (*The Corporation of Wellington* v. *Wilson et al.*, 14 U. C. C. P. 299; S. C. 16 U. C. C. P. 124).

(*l*) Among the exceptions to public roads, &c., being under the

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by Proclamation declare any Public Road or Bridge under the control of the Commissioner of Public Works, to be no longer under his control, and in that case after a day named in the Proclamation, the Road or Bridge shall cease to be under the control of the Commissioner, and no tolls shall be thereafter be levied thereon by him, and the Road or Bridge shall thenceforth be controlled and kept in repair by the Council of the Municipality. (*m*)

ROADS ON ORDNANCE LANDS.

319. No Council shall pass any By-law (1) for stopping up or altering the direction or alignment of any street, lane or thoroughfare made or laid out by Her Majesty's Ordnance, or the Principal Secretary of State in whom the Ordnance Estates are vested under the Statute of this Province, passed in the nineteenth year of Her Majesty's Reign, chapter forty-five, or the Consolidated Statute of Canada, chapter twenty-four, respecting the Ordnance and Admiralty lands transferred to the Province; (2) or for opening any such communication through lands held by the said Principal Secretary of State, or (3) interfering with any bridge, wharf, dock, quay or other work constructed by Her Majesty's Ordnance, or the said Secretary of State, or (4) interfering with any land reserved for Military purposes, or with the integrity of the public defences, without a written consent signed by the Principal Officer of the War Department, acting in Canada under the authority of such Secretary of State, certified under the hand of the Commander of the Forces in Canada to be such Principal Officer and to be acting under such authority, and a By-law for any of the purposes aforesaid shall be void unless it recites such consent, authority and certificate. (*n*)

Nor Ordnance lands roads, &c.

Unless sanctioned by the Chief Engineer, Officer, &c.

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jurisdiction of Municipal Councils, are public roads, &c., *vested as provincial works* in Her Majesty, or in any public department or board, such as the Department of Public Works. Over these the Governor General of the Province is to have the same powers as are by this act given to Municipal Councils with respect to *other* roads, &c.

(*m*) This provides for the transfer of a provincial road to the Municipal Council of the Municipality in which it is situate—so far as this section affects it, it was originally taken from statute 13 & 14 Vic. cap. 15, sec. 2. See sec. 229 and notes thereto.

(*n*) The object of this section is to protect roads, &c., laid out through Ordnance Lands. The Ordnance Transfer Act of 1856 divided Ordnance Lands into two schedules; the first schedule comprising all lands vested in one of Her Majesty's principal Secretaries of State, and the second such lands as are reinvested in the Crown for the public uses of the province. (See Con. Stat. C. cap. 36.)

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WHAT ROADS NOT TO BE CLOSED.

320. No Council shall close up any public road or highway, whether an original allowance, or a road opened by the Quarter Sessions, or any Municipal Council, or otherwise legally established, whereby any person will be excluded from ingress and egress to and from his lands or place of residence over such road, but all such roads shall remain open for the use of the person who requires the same. (*o*)

Council not to close road required by individuals for egress, &c.

NOT TO ENCROACH UPON HOUSES, &C.

321. No Council shall authorize an encroachment on any dwelling-house, barn, stable, out-house, orchard, garden, yard or pleasure ground, without the written consent of the owner. (*p*)

Nor to encroach upon houses, &c.

(*o*) The power of Municipal Corporations to close up highways is not unlimited. The Legislature has determined that the rights of private persons under certain circumstances shall be respected. The limitation is here in favour of individual proprietors of land. No road is to be closed up "*whereby* any person shall be excluded from ingress and egress to and from his lands," &c. The next section is in like manner designed to prevent an encroachment on any dwelling house, barn, stable, entrance, orchard, yard or pleasure ground.

(*p*) This section is also for the protection of private rights as opposed to public convenience. Unless there be a written consent from the owner, no Council is to authorize an encroachment on any dwelling house, &c. But it is not in the power of a person apprehending that a road is intended to be laid out through his land to prevent the Municipal Council effecting a public improvement by putting up an outhouse where it is not required, or planting a few trees where he had never thought of planting them before, and where he never would have planted them except for the purpose of obstructing the improvement. (Per Robinson, C. J., *In re Lafferty and the Municipal Council of Wentworth and Halton*, 8 U. C. Q. B. 232.) Where the orchard was planted eighteen months after the owner of the land knew that it was desired to lay out a road through his land as one that would be convenient to the public, and after the precise line as afterwards established had been selected and surveyed, the Court refused to quash the by-law. (*In re Lafferty and the Municipal Council of Wentworth and Halton*, 8 U. C. Q. B. 232.) The Municipal Council of the Township of York passed a by-law, causing a road to be surveyed and laid out, on the petition of the owners of the land in the neighbourhood, which passed through applicants land, and he made his application to quash the by-law on the ground that the road as laid out encroached upon his garden and out-house, and also covered the ground on which he had a toll house standing. The applicant was heard in person by the Municipal Council against the passing of the by-law authorizing the opening of the road as laid out, when he objected generally to the opening of the road, but did not object to it on the ground that it encroached on his buildings and garden. By the affidavits it appeared that the road had been opened a number of years before by applicant's

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WIDTH OF ROADS.

Width of roads.

322. No Council shall lay out any road or lane more than ninety nor less than thirty feet in width; but any road, when altered, may be of the same width as formerly. (*q*)

NOTICE TO BE GIVEN OF BY-LAWS INTENDED TO AFFECT PUBLIC ROADS.

What notice to be given of by-laws intended to effect public roads.

323. No Council shall pass a By-law for stopping up, altering, widening, diverting or selling any original allowance for road, or for establishing, opening, stopping up, altering, widening, diverting or selling any other public highway, road, street or lane: (*r*)

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father and had been travelled, and that applicant since his father's death had charged toll to those using the road. It also appeared that the only building the road encroached upon was a small hen house of little value, and passed over the ground occupied by the frame of the proposed toll-house. The old road as travelled varied from 29 to 65 feet, and, in defining the width of the road so to be opened, it encroached slightly on plaintiff's private property. The court on these facts being laid before them refused to quash the by-law for opening the road. (*Scarlett* v. *The Corporation of York*, 14 U. C. C. P. 161.) The Court of Chancery on a proper case being made out for their interference no doubt would grant an injunction to prevent a violation of the provisions of this section. (See *Wilson* v. *Town Council of the Town of Port Hope*, 2 Grant, 370.)

(*q*) A by-law opening a new road should on the face of it show the width of the road (*In re Smith and the Municipal Council of Euphemia*, 8 U. C. Q. B. 222), and should, it seems, when it authorizes a road through a man's land, show where it enters and what course it takes. (*Dennis* v. *Hughes et al.*, 8 U. C. Q. B. 444.) All by-laws authorizing new roads should, either by reciting the whole description of the road given in the survey or report, or by describing it fully, whether such by-laws refer to the report or not, make it plain to every one that sees the by-laws where the road is to run and how wide it is to be, and should not leave the information to be gleaned from documents not referred to in the by-laws as annexed and not in fact annexed. (*In re Brown and the Municipal Council of the County of York*, 8 U. C. Q. B. 596; *McIntyre* v. *The Municipal Council of Bosanquet*, 11 U. C. Q. B. 460.) The same strictness does not of course apply to a by-law closing up an old road. (*Fisher* v. *The Municipal Council of Vaughan*, 10 U. C. Q. B. 492.) Where the road was not sufficiently described, but it appeared that on the ground it was defined by fences on each side, and had been travelled for eight years, the court refused to quash the by-law. (*Hodgson* v. *The Municipal Councils of York, Peel and Ontario*, 18 U. C. Q. B. 268.)

(*r*) It ought to be observed that notice is requisite, not only before a Council shall pass a by-law "for stopping up, altering, widening, diverting or selling any original allowance," but "for establishing, *opening*, stopping up, altering, widening, diverting or selling any other public highway, road, street or lane." Under the old acts it was held that no notice was necessary before passing a by-law to open a new

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1. Until written or printed notices of the intended By-law have been posted up one month previously in six of the most public places in the immediate neighbourhood of such original allowance for road, street or other highway, road, street or lane; (s) Publication.

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road; the clause then in force only applying to by-laws "for stopping up, altering, widening or diverting a road." &c. (*Dennis* v. *Hughes et al.*, 8 U. C. Q. B. 444.) It seems that a road is not made, &c., when a by-law authorizing the making of it is passed, but only that it is authorized to be made, &c., by the proper officer acting in a reasonable manner. (*Ib.*) As to stopping up, &c., it is not necessary for the Council to do more than close or abolish the highway by their enactment. They are not required to fence it in, or to place any physical obstruction in the way of persons passing. They only put an end to the right of using it, and consequently to all obligation on the part of any person to respect it as a highway. The conveying away the former line of road, where they have authority to do so, is a distinct matter altogether, and not necessary to the extinction of the right of way. (*Johnston* v. *Reesor et al.*, 10 U. C. Q. B. 101.) Both Counties and Townships have power to stop up original allowances for roads, and to sell the same (see secs. 344, 345); but if by a Township Council, there must be confirmation by the County Council (sec. 345, sub-sec. 2).

(s) The Court, on an application to quash a by-law, will assume that the Council have acted regularly in their preliminary proceedings till the contrary be shewn. (*In re Lafferty and the Municipal Council of Wentworth and Halton*, 8 U. C. Q. B. 232; *Fisher* v. *The Municipal Council of Vaughan*, 10 U. C. Q. B. 492.) It would be well, however, that the Corporation should in every case preserve proof of regular notices by affidavit of the person employed to put them up. (Per Robinson, C. J., in *In re Lafferty and the Municipal Council of Wentworth and Halton*, 8 U. C. Q. B. 235.) Where applicant, attacking a by-law, ventured to go no further than file an affidavit of a person who said he had no recollection of seeing any notice, without asserting his belief that due notice had not been given, or taking any means whatever to ascertain whether or not the notices were put up, the Court refused to interfere. (*Fisher* v. *The Municipal Council of Vaughan*, 10 U. C. Q. B. 492.) So where applicant did not positively negative any notices having been put up, the Court refused to interfere, although the Municipal Council did not prove that six notices were put up. (*Parker* v. *The Municipalities of the United Townships of Pittsburgh and Howe Island*, 8 U. C. C. P. 517.) To a declaration in trespass *quare clausum fregit*, the defendant filed several pleas, justifying the trespass as done by him as servant of the Municipal Council of the United Counties of Wentworth and Halton, and by their command, in pursuance of a by-law passed on 31st January, 1850, in accordance with the provisions and requirements of the Municipal Act of 1849, which came into force on 1st January, 1850. *Held* on demurrer that it was a valid objection to the several pleas, that they did not show a calendar month's notice given previous to the passing of the by-law; that on the contrary they imported on the face of them that it could not have been given, because the by-law was passed within a month after the Municipal Act of 1849 came into operation. (*Lafferty* v. *Stock*, 3 U. C. C. P. 1.)

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The same.

2. And published weekly for at least four successive weeks in some newspaper (if any there be) published in the Municipality; or if there be no such newspaper, then in a newspaper published in some neighbouring Municipality; (*t*)

Parties to be heard.

3. Nor until the Council has heard, in person or by Council or Attorney, any one whose land might be prejudicially affected thereby, and who petitions to be so heard; (*u*)

Clerk to give the notice.

4. And the Clerk shall give such notices, at the request of the applicant for the By-law, upon payment of the reasonable expenses attendant on such notices. (*v*)

IN DISPUTES RESPECTING ROADS—WHO MAY SWEAR WITNESSES, &c.

Power to administer oaths in disputes respecting boundaries.

324. In case of disputes in any Municipality, concerning roads, allowances for roads, side lines, boundaries or concessions, within the cognizance of and in the course of investigation before a Municipal Council, the head of the Council may administer an oath or affirmation to any party or witness examined upon the matters in dispute. (*a*)

(*t*) It will be observed that the statute does not fix any number of insertions of the by-law in a newspaper, but the publication weekly for a fixed period, viz., "at least four successive weeks." If, therefore, the final publication be on a Saturday, that week would expire on the following Friday, and so for each successive week. A notice first published on the 12th January, for Tuesday, the 7th February, was held not to be a publication for "four consecutive weeks." (*In re Coe and the Corporation of the Township of Pickering*, 24 U. C. Q. B. 439.)

(*u*) Where applicant, being aware of the day of the passing of a by-law, gave notice that he intended opposing the same, but took no further steps in opposition until making an application to the Court to quash the by-law, his rule was discharged. (*Parker* v. *The Municipalities of the United Townships of Pittsburgh and Howe Island*, 8 U. C. C. P. 517.) Where the person intending to oppose a by-law to open a road appeared before the Council and took only general grounds of opposition, the Court afterwards, when he applied to quash the by-law on grounds more specific, declined to interfere. (*In re Scarlett and the Corporation of the Township of York*, 14 U. C. C. P. 161.)

(*v*) The right of the Clerk is to exact "the reasonable expenses attendant on such notices." The municipality has no right to throw the expense of opening the road on the petitioners. (*Lafferty* v. *Stock*, 3 U.C. C.P. 1.) Where it is the clear duty of a Municipal Council to make a road, the Court may grant a mandamus to compel the performance of that duty. (*In re Municipality of Augusta and the Municipal Council of Leeds and Grenville*, 12 U. C. Q. B. 522.) The Council, in opening a road, must act by by-law. (*The Queen* v. *Rankin*, 16 U. C. Q. B. 304.)

(*a*) There is some obscurity in this section. It is not intended to give Municipal Councils jurisdiction to *try* and *determine* disputed boundaries, &c., but only to institute such an investigation respecting such roads or lines, &c., as are material to the exercise of the jurisdic-

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COMPENSATION FOR LANDS TAKEN.

325. Every Council shall make to the owners of real property entered upon, taken or used by the Corporation in the exercise of its powers in respect to roads, streets and other public communications, or to drains and common sewers, due compensation for any damages necessarily resulting from the exercise of such powers, beyond any advantage which the claimant may derive from the contemplated work; (*b*) and

Owners of lands taken, to be compensated.

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tion which the Councils possess. The section is founded on sec. 126 of the old Act 12 Vic. cap. 81, which was not in the original bill, as introduced in 1849, but was inserted before the bill became law, by some person who had no clear idea of what he was doing.

(*b*) Where a statute authorizes acts interfering with private rights of property, all such acts are to be taken strictly; and the persons justifying under the statute must show themselves to be right in every thing done by them. (*Dennis* v. *Hughes et al.*, 8 U. C. Q. B. 444.) The power of a Municipal Council to refer proprietors to private parties for compensation is, to say the least of it, very doubtful. (*Ib.*; *Lafferty* v. *Stock*, 3 U. C. C. P. 1.) But a by-law closing up an old road and directing that the parties applying to have the road enclosed should pay the expenses, is not necessarily bad. (*Fisher* v. *The Municipal Council of Vaughan*, 10 U. C. Q. B. 492.) A party who accepts a sum of money in satisfaction of his right to land taken for a road, &c., is not allowed afterwards to contend that the road was illegally laid out, by reason of want of notice or other formality. (*McGrath* v. *The Municipality of the Township of Brock*, 18 U. C. Q. B. 629.) Owners of land upon a highway have no claim to compensation for anything done by a Municipal Corporation in the proper exercise of its powers within the line as originally laid out. (*The Queen* v. *The Municipal Council of Perth*. 14 U. C. Q. B. 156.) Thus where the effect of grading a road is to raise or lower it several feet along applicant's house he is not entitled to any compensation. (*Ib.*) So where in the repair of a street, water was made to overflow plaintiff's land he was held not entitled to recover unless it be shown that the work done exceeded such a repair as was necessary. (*Croft* v. *The Town Council of Peterborough*, 5 U.C. C.P. 35.) If the work done exceed ordinary repairs a by-law would appear to be necessary. (*Ib.*) So where, while work of repair was going on, stones and other materials collected for it were carried into plaintiff's raceway by a violent storm, the Corporation was held not to be liable. (*Snook et al.* v. *The Town Council of Brantford*, 14 U. C. Q. B. 255.) The Municipal Council may pass by-laws for the purpose of repairing any road or bridge within its limits, and for entering upon, breaking up, taking or using any land in any way necessary or convenient for that purpose, subject to the restrictions in the act contained. (Sec. 333, sub-sec. 1.) But it is not in the power of the Municipal Corporation at their pleasure to drain a highway upon the lands of an adjoining proprietor without compensation to him for it. (*Brown* v. *The Municipal Council of Sarnia*, 11 U. C. Q. B. 87; *Anderson* v. *The Great Western Railway Company*, *Ib.*, 125; *Perdue* v. *The Corporation of Chinguacousy*, 25 U. C. Q. B. 61.)

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any claim for such compensation, if not mutually agreed upon, shall be determined by arbitration under this Act. (*c*)

TITLES TO LAND OF INFANTS, &C., HOW ACQUIRED.

Title to lands taken.

326. In the case of real property, which a Council has authority under this Act to enter upon, take or use, without the owner's consent, Corporations, Tenants in tail or for life, Guardians, Committees and Trustees, shall, on behalf of themselves, their successors and heirs respectively, and on behalf of those they represent, whether infants, issue unborn, lunatic, idiots, married women or others, have power to act, as well in reference to any arbitration, notice and action under this Act, as in contracting for and conveying to the Council any such real property, or in agreeing as to the amount of damages arising from the exercise by the Council of any power in respect thereof. (*d*) In case there is no such person who can so

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(*c*) The court set aside an award against a Municipal Corporation as to damages in favor of a person through whose land a road had been opened where it appeared that no notice had been given to the Municipal Corporation of the meeting of the arbitrators. (*In re Johnson and the Municipality of Gloucester*, 12 U. C. Q. B. 135.) A Municipal Council by by-law opened a road across plaintiff's property, and arbitrators were appointed, one by the council, one by the plaintiff, and the third by the Judge of the County Court, to determine what compensation should be paid him. Afterwards a resolution was passed by the Council that the arbitrators so chosen should be instructed to take into consideration the damage to the plaintiff's crops, so that all differences might be settled, and they awarded separate sums for the opening of the road and for damages. *Held*, in an action of debt on the award, that the Corporation could not under the plea of no award dispute the arbitrators authority to award the latter sum. (*Hodgson* v *The Municipality of the Township of Whitby*, 17 U. C. Q. B. 230.) *Quære*, whether the resolution was binding on the Council as a reference. (*Ib.*) Where in a similar action it appeared that plaintiff named one arbitrator and the reeve another, and they being unable to agree on the third, the County Judge appointed the third, and the first and third mentioned arbitrators made an award in favour of plaintiff for £40 for compensation for land taken for a road, it was held that plaintiff was entitled to recover. (*Harpel* v. *The Municipality of the Township of Portland*, 17 U. C. Q. B. 455.) Afterwards the council called another meeting of the arbitrators when all three attended, and the two first mentioned arbitrators made an award giving plaintiff only £3 10s., it was held that the second award was invalid. (*Ib.*)

(*d*) Where land is required for a public purpose, it is a very common provision that persons not otherwise entitled to convey an estate in fee simple shall, for the public purposes specified, have power to do so. The power of the persons described in this section to do so is confined to land which the Municipal Council has authority under this section to enter upon, take or use, without the owner's consent.

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act in respect to such real property, or in case any person interested in respect to any such real property is absent from this Province, or is unknown, or in case his residence is unknown, or he himself cannot be found, the Judge of the County Court for the County in which such property is situate, may, on the application of the Council, appoint a person to act in respect to the same for all or any of the said purposes. (*e*)

If there be no party who can convey.

327. In case any party acting as aforesaid has not the absolute estate in the property, the Council shall pay to him the interest only at 6 per centum per annum on the amount to be paid in respect of such property, and shall retain the principal to be paid to the party entitled to it whenever he claims the same, and executes a valid acquittance therefor, unless the Court of Chancery, or other Court having equitable jurisdiction in such cases, do in the mean time direct the Council to pay the same to any person or into Court; (*f*) and the Council shall not be bound to see to the application of any interest so paid, or of any sum paid under the direction of such Court. (*g*)

Where a party has a life interest only.

Sum awarded, how to be applied.

328. All sums agreed upon or awarded in respect of such real property, shall be subject to the limitations and charges to which the property was subject; (*h*)

Charges on the purchase money.

(*e*) When no person entitled, under the provisions of this act, to convey the land required can be found, the County Judge may, on application of the Council, "appoint a person to act in respect of the same, for all or any of the said purposes."

(*f*) A railway company agreed to pay a land owner, tenant for life, a sum of money for the benefit of him or other the owner for the time being, for indemnifying him from the expense of making a new road, &c., and as a compensation for the annoyance which he or such other owners might sustain in consequence of the construction of the railway; and the company agreed to pay a further sum as the price of the land taken. Both sums were paid into court. The application of the tenant for life for the absolute payment to him of the first sum was refused. The costs of the road, &c., were paid out of it, and the rest invested. (*Re Duke of Marlborough Estates*, 13 Jur. 738.)

(*g*) This is a wise provision. It is a rule in equity that a person paying money to a trustee, &c., is bound to see to the application of the money. This has been found to work such hardship, that as between individuals it is now enacted that a person paying money upon an express or implied trust, is not bound to see to the application or be answerable for the misapplication thereof, unless the contrary is expressly declared by the instrument creating the trust. (Con. Stat. U. C. cap. 90, sec. 9.) In the same spirit it is, by the section under consideration, enacted that a Municipal Council paying money, &c., as authorized by the section, shall not be bound to see to the application thereof.

(*h*) In the absence of special clauses for that purpose, the effect of

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JOINT JURISDICTION OVER ROADS.

Joint jurisdiction over certain roads

329. In case a road (*i*) or bridge lies wholly or partly between a County, Town, City, Township or incorporated Village, and an adjoining County, Town, City, Township or incorporated Village, (*j*) the Councils of the Municipalities

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a provision enabling a person under disability, &c., to convey land for some authorized public purpose, is not to alter the course of devolution of property without the consent of the owner; and therefore if a Municipal Council, railway company, &c., contract with incapacitated persons for the purchase of land, the money is in equity to be considered as real and not as personal estate. (*Midland Counties Railway Company* v. *Oswin*, 8 Jur. 138.) Money paid into court by a railway company, for land taken from a person who was in a state of mental imbecility, and who continued in that state until his death, but was not the subject of a commission of lunacy, was ordered after his death not to be reinvested in or considered as land, but to be paid to his executors. (*In re East Lincolnshire Railway Act*, 1 Sim. N. S. 260.) Money paid into court for land taken under the compulsory powers of the English Act 5 & 6 Wm. IV. cap. 69, for a Poor Law Union, during the life of a tenant for life, who by the failure of intermediate limitations became tenant in fee simple, passed as real estate to his heir. *In re Horner's Estate*, 16 Jur. 1063.) Where the purchase money of land taken under the compulsory powers of an act of Parliament, for public purposes, is paid into court subject to be reinvested in the purchase of land, free of expense to the parties beneficially interested, on their petition, it is impressed with real uses, and is *prima facie* to be treated as real estate. (*In re Stewart's Estates*, 16 Jur. 1063.) If the person absolutely entitled to money for land has a right to elect to take it as personalty, a mere acquiescence in its remaining invested in consols during his life, and his will, by which he bequeaths personal estate only, and does not devise realty, are not such proofs of election as to prevent the funds descending on his death to his heirs. (*Ib.*)

(*i*) The act appears to apply to unopened as well as open roads. (*In re Corporation of the County of Waterloo and the Corporation of the County of Brant*, 23 U. C. Q. B. 537.)

(*j*) The Legislature here speaks of road *or* bridge, as two distinct things. They do not speak of bridges which form part of a road lying wholly or in part between Counties, &c. As, therefore, the "road" and "bridge" are spoken of as distinct things, the disjunctive particle being used, it is the same as if each had been treated of in a separate clause. Thus, "If a bridge lies *wholly* or partly between a county, &c., the Councils of the municipalities between which the *bridge* lies shall have joint jurisdiction over the same, &c." The act, according to this reading, is inapplicable to a bridge, though on a road between two counties, &c. (*In re the Corporation of the County of Brant and the Corporation of the County of Waterloo*, 19 U. C. Q. B. 450.) So the section is inapplicable when the road is wholly in the one municipaliiy. (*The Churchwardens of St. George's Church* v. *The Corporation of the County of Grey et al*, 21 U. C. Q. B. 265.) When the obligation is joint, it must be proved as laid. (*Woods* v. *The Municipality of Wentworth and the Corporation of Hamilton*, 6 U. C. C. P. 101.)

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between which the road or bridge lies, shall have joint jurisdiction over the same, (*k*) although the road or bridge may so deviate as in some places to be wholly or in part within one or either of them. (*l*)

Both Councils must concur in By-laws respecting them.

330. No By-law of the Council of any one of such Municipalities with respect to any such last mentioned road or bridge, shall have any force until a By-law has been passed in similar terms as nearly as may be, by the other of the Councils having joint jurisdiction in the premises. (*ll*)

Arbitration if they do not concur.

331. In case the other Council, for six months after notice of the By-law, omits to pass a By-law in similar terms, the duties and liabilities of each Municipality in respect to the road or bridge shall be referred to arbitration under the provisions of this Act. (*m*)

POWERS OF TOWNSHIP, TOWN AND INCORPORATED VILLAGE COUNCILS RESPECTING ROADS, BRIDGES AND WORKS.

By-laws respecting statute labour.

332. The Council of every township, town and incorporated village may also pass By-laws: (*n*)

(*k*) It is doubtful if the words used in this section, conferring joint jurisdiction, mean anything more than that the municipalities jointly interested are to concur in any regulation necessary to be applied to the road or bridge in regard to tolls or otherwise. (*In re Corporation of Brant and Corporation of the County of Waterloo*, 19 U. C. Q. B. 450.) But the words "duties" and "liabilities," as used in section 331, may be held to give a more extended meaning to them.

(*l*) It would seem that the section only applies where the deviation has been made to obtain a good line of road, not in order to suit the convenience of either municipality. (Per Robinson, C. J., *In re Corporation of the County of Brant and the Corporation of the County of Waterloo*, 19 U. C. Q. B. 450.)

(*ll*) In case the other municipality omit, for six months after notice, to pass a by-law on similar terms, the duties and liabilities of each municipality must be determined by arbitration under this act. (Sec. 331.) As to the meaning of the words "joint jurisdiction," see note *k* to sec. 329.

(*m*) Whether or not the arbitrators have power in respect to a bridge, to direct where and at what cost the bridge shall be built, and to compel the respective municipalities to contribute, is doubtful. (*In re Corporation of the County of Brant and the Corporation of the County of Waterloo*, 19 U. C. Q. B 450.) But where the road or bridge is wholly within either municipality, there is clearly no jurisdiction to make any award. (*Ib.*)

(*n*) This section applies to all municipalities except counties and cities.

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STATUTE LABOUR.

Voluntary commutation

1. For empowering any person (resident or non-resident) liable to statute labour within the Municipality, to compound for such labour, for any term not exceeding five years, at any sum not exceeding one dollar for each day's labor (*o*)

(*o*) No person in Her Majesty's naval or military service, on full pay or on actual service, is liable to perform statute labour or to commute therefor. (Assessment Act sec. 80.) But every other male inhabitant of a city, town, or village of the age of 21 years and upwards, and under 60 years of age, (and not otherwise exempted by law) from performing statute labor, who has not been assessed upon the assessment roll of the city, town, or village or whose taxes do not amount to $2, must instead of statute labor be taxed $2 yearly therefor, to be levied and collected at such time by such person and in such manner as the Council of the Municipality may by by-law direct. (*Ib.* sec. 81.) No person is exempt from the tax by reason of his producing a certificate of his having performed statute labor or paid the tax elsewhere, unless he was actually domiciled out of the limits of the city, town, or village, at the time he so performed statute labor or paid the tax. (*Ib.* sec. 82.) But a proprietor of land cannot be compelled actually to do statute labor in a township, unless himself a resident of such township (*Moore* v. *Jarron*, 9 U. C. Q. B. 238) and the power to pass by-laws for enforcing performance of statute labor only applies in those cases where the burthen legally exists. (*In re Executors of Dickson and the Municipal Council of the Village of Galt*, 9 U. C. Q. B. 257.) Non-resident proprietors are, however, clearly subject to assessment for commutation for statute labour. A non-resident who has not required his name to be entered on the roll is not entitled to be admitted to perform statute labour in respect of land owned by him. (*Ib.* sec. 89.) But a commutation tax must be charged against every separate lot or parcel according to its assessed value. (*Ib.*; see also *The Canada Company* v. *Howard*, 9 U. C. Q. B. 654.) Unless perhaps where the land has been sub-divided into park, village or town lots, if the same be owned by the same person or persons, in which case the tax shall be charged only upon the aggregate of the assessment. (*Ib.* sec. 65.) In case any non-resident proprietor whose name has been entered on the assessment roll, does not perform his statute labor or pay commutation for the same, the overseer of highways in whose division he is placed, must return him as a defaulter to the Clerk of the Municipality before 15th August, and the Clerk must in that case enter the commutation for statute labour against his name in the Collector's Roll. (*Ib.* sec. 90.) If at any time before first May then next ensuing, the owner of any non-resident lands gives in writing to the County Treasurer, a list of the lands owned by him in the Municipality, and tenders to him in full the taxes on such land and the just commutation money, he is only subject to the commutation for statute labor upon the aggregate value of all the lands owned by him in each local Municipality; but after 1st May as aforesaid, no change can be made in the commutation for statute labor charged against each separate parcel in consequence of more than one parcel being owned by the same party. (*Ib.* sec. 90.)

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2. For providing that a sum of money, not exceeding one dollar for each day's labor, may or shall be paid in commutation of such Statute labour; (*p*) Compulsory commutation

3. For increasing or reducing the number of days' labor, to which the persons rated on the assessment roll or otherwise shall be liable, in proportion to the Statute labor to which such persons are, in respect of the amounts at which they are assessed, or otherwise, respectively liable; (*q*) Fixing number of days' labour.

(*p*) The power, by the preceding sub-section, is to compound "for any term not exceeding five years." This sub-section applies to the amount of commutation money for each day's statute labour, in respect of the period for which the commutation is made. The power is by by-law to provide that a sum of money not exceeding one dollar for each day's statute labour may or shall be paid in respect of such statute labour. There is no power to fix the amount of commutation at a higher rate than one dollar per day. (See *In re Tilt and the Municipality of Toronto*, 13 U. C. Q. B. 447.) The sum so fixed shall apply equally to residents who are subject to statute labor and to non-residents in respect of their property. (Assessment Act, sec. 86.) Where the Council of any Township by by-law directs that a sum not exceeding $1 per day shall be paid as commutation for statute labor, the commutation tax may be added in a separate column in the Collector's Roll, and collected and accounted for like other taxes. (*Ib.* sec. 85.) Where no such by-law has been passed, the statute labor in Townships in respect of lands of non-residents shall be commuted at the rate of 50 cents for each days labour. (*Ib.* sec. 87.) No by-law is necessary unless the Municipality desire to fix the commutation money at a higher rate than 50 cents a day. (*Robinson* v. *The Corporation of the Town of Stratford*, 28 U. C. Q. B. 99.)

(*q*) Every male inhabitant of a Township, between the ages of 21 and 60, who is not otherwise exempt to any amount (and who is not exempt by law from performing statute labour) is liable to at least one day of statute labor on the Roads and highways in the Township. (Assessment Act, sec. 83.) And no Council has power to reduce it, (*Ib.*) and every person assessed upon the assessment roll of a township in respect of property, is, if his property is assessed at not more than $300, liable to 2 days' statute labour.

At more than $300	but not more	than	$500	3	days.
do. 500	do.	do.	700	4	"
do. 700	do.	do.	900	5	"
do. 900	do.	do.	1200	6	"
do. 1200	do.	do.	1600	7	"
do. 1600	do.	do.	2000	8	"
do. 2000	do.	do.	2400	9	"
do. 2400	do.	do.	3200	10	"
do. 3200	do.	do.	4000	12	"
and for every 1000 above $4000				1	"

But the Council of any Township has power by a by-law operating generally and ratably, to reduce or increase the number of days of statute labor to which all the parties rated on the assessment roll or

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Enforcing statute labour.

4. For enforcing the performance of Statute labor, or payment of a commutation in money in lieu thereof, when not otherwise provided by law; (*r*)

Regulating the application of labor and commutation money

5. For regulating the manner and the divisions in which Statute labor or commutation money shall be performed or expended. (*s*)

POWERS OF ALL COUNCILS RESPECTING ROADS, BRIDGES AND WORKS.

333 The Council of every Township, County, City Town and incorporated Village may pass By-laws : (*a*)

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otherwise are respectively liable, or that the number of days labor to which each person is made liable, be in proportion to the amount at which he is assessed. (*Ib.* sec. 84.)

(*r*) Any person liable to pay the sum named in the eighty-third section of the Assessment Act, must pay the same to the collector within two days after demand thereof; and in case of neglect or refusal to pay the same, the collector may levy the same by distress; and if no sufficient distress can be found, then upon summary conviction, before a Justice of the Peace of the county in which the local municipality is situate, of his refusal or neglect to pay the said sum, and of there being no sufficient distress, he shall incur a penalty of $5 with costs, and in default of payment at such time as the convicting justice shall order, may be committed to the common gaol of the county, and be there put to hard labour for any period not exceeding ten days, unless such penalty and costs, and the cost of the warrant of commitment and of conveying the said person to gaol, be sooner paid. (Assessment Act, sec. 88.) The warrant may, it seems, issue for imprisonment without first summoning the defaulter to answer, or making a formal conviction. (*The Queen* v. *Morris*, 21 U. C. Q. B. 392.) A by-law directing that the Overseers of Highways should bring any person refusing or neglecting to perform statute labour before the Reeve of the municipality or nearest Justice of the Peace, who, upon conviction, should impose a fine of 5s. for each day's neglect with costs, and adjudge that the payment of such fine should not relieve the person fined from the performance of the labour, was held good. (*In re Stoddart and the Municipality of Wilberforce, Grattan, and Fraser*, 15 U. C. Q. B. 163.) So a by-law enacting that any person liable to perform statute labour, who after being duly notified should neglect or refuse to attend, should forfeit or pay 5s. for every day he should neglect or refuse, and that the payment of such fine should release such person from the performance of statute labour, was held good. (*In re Bannerman and the Municipality of Yarmouth*, 15 U. C. Q. B. 14.)

(*s*) The power to regulate the divisions implies a power to make divisions, to which is added a power to regulate the manner in which the labour shall be performed or the commutation money expended in each division. A party to save himself from fine must perform, when called upon, his statute labour within the division of the township in which he resides. (*Gates* v. *Devenish*, 6 U. C. Q. B. 260.)

(*a*) It will be observed that this section applies to *all* municipalities.

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GENERAL POWERS.

By-laws respecting roads.

Opening or stopping up roads, &c.

1. For opening, making, preserving, improving, repairing, widening, altering, diverting, stopping up and pulling down drains, sewers, water-courses, roads, streets, squares, alleys, lanes, bridges or other public communications, within the jurisdiction of the Council, and for entering upon, breaking up, taking or using any land in any way necessary or convenient for the said purposes, subject to the restrictions in this Act contained; (*b*)

(*b*) It was at one time contended that the Municipal Councils had only authority to change the direction of existing roads, and to widen or otherwise alter them—not to make *new* roads; but it is now settled that such Councils have power to make new roads through any person's lands, not merely as substitutes for other roads running near and between the same points, but to afford a passage from one point to another where there has been no passage before. (*Dennis* v. *Hughes et al.*, 8 U. C. Q. B. 444.) All by-laws under the authority of which any street, road or highway shall be opened upon any private property must, before the same becomes effectual in law, be duly registered in the Registry Office of the county where the land is situate. (Sec. 348.)

The powers are not only for opening, making, preserving, improving and repairing, but for widening, altering, diverting, stopping up and pulling down drains, sewers, water-courses, roads, &c. (See *The Queen ex rel. Goodall et al.* v. *Phillips et al.*, 1 L. R. Q. B. 648.) The power to repair highways must be reasonably exercised. (*Reid* v. *The City of Hamilton*, 5 U.C. C. P. 269; *Croft* v. *The Town Council of Peterborough*, 5 U. C. C. P. 35.) A Municipal Council, for instance, in order to drain a highway, has no right to bring down water in any quantity upon the land of an individual, and leave the water to stagnate there, without showing that it could not in any way have been got rid of without throwing it on plaintiff's land, and without showing that it was not in the power of the Council to lead the water away from the plaintiff's land after the Council had conducted it there. (*Brown* v. *The Municipal Council of Sarnia*, 11 U. C. Q. B. 87; *Perdue* v. *The Corporation of Chinguacousy*, 25 U. C. Q. B. 261.) But the Council is not responsible for injuries to the property of private persons resulting from natural causes; thus, where during the repair of a highway, stones and other materials collected for it about a culvert, were by a violent storm carried into a miller's raceway, the Council was held not to be liable for the damage. (*Snook et al.* v. *The Town Council of Brantford*, 14 U. C. Q. B. 255.)

Power is conferred not only to pass by-laws for opening, &c., roads, &c., but for entering upon, breaking up, taking or using any land in any way necessary or convenient for the purposes mentioned, subject, however, "to the restrictions in this act contained." By the 325th section it is provided that "every Council shall make to the owners of real property entered upon, taken or used by the Corporation in the exercise of its powers in respect to roads, streets or other public communications, &c., due compensation for any damage necessarily resulting from the exercise of such powers, beyond any advantage which the claimant may derive from the contemplated work." It is clear, there-

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TOLLS.

To raise money by toll.

2. For raising money by toll, on any bridge, road or other work, to defray the expense of making or repairing the same; (c)

FAST DRIVING ON BRIDGES.

To regulate driving on bridges.

3. For regulating the driving and riding on public bridges; (d)

PITS AND PRECIPICES.

To make regulations as to pits, &c.

4. For making regulations as to pits, precipices and deep waters, and other places dangerous to travellers; (e)

ROAD ALLOWANCES.

For preservation of trees, stone, &c.

5. For preserving or selling timber, trees, stone, sand or gravel, on any allowance or appropriations for a public road; (f)

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fore, that no Municipal Corporation has a legal right to say they may trespass a little upon the property of a private person, doing no unnecessary damage, unless they show it was necessary and convenient for them for the purposes of the road, street or other work; and that, it is apprehended, should be done by a by-law passed for the purpose. (*The Churchwardens of St. George's Church* v. *The Corporation of the County of Grey et al.*, 21 U.C. Q.B. 265.) Unless a by-law were shown, the Corporation would be looked upon as trespassers; and to answer, under such circumstances, that they trespassed a little, doing no unnecessary damage, would be no answer at all. (*Ib.*) So Municipal Councils may pass by-laws for searching for and taking such timber, gravel, stone or other material or materials as may be necessary for making and keeping in repair any road or highway belonging to the municipality. (Sub-sec. 10, *infra.*) But the right of entry upon such lands, as well as the prices or damage to be paid to any person for such materials, must, if not agreed upon, be settled by arbitration under this act. (*Ib.*) A by-law of a County Council, appropriating a certain sum of money "to be expended on certain roads within the county (not defined), in such manner as the township and town councillors may think proper," has been held bad. (*In re Conger and the Peterborough Municipal Council*, 8 U. C. Q. B. 349.) So a by-law taxing the wild lands of a district, "for the purpose of improving the roads and bridges (not defined), and liquidating the debts of the district." (*Doe dem. McGill* v. *Langton*, 9 U. C. Q. B. 91.)

(c) The authority to raise money by toll on a bridge, &c., appears to exist only when necessary "to defray the expense of making or repairing the same," and not for mere purposes of revenue. See (*In re Campbell and the Corporation of the City of Kingston*, 14 U.C. C. P. 285.)

(d) No person is allowed to race or drive furiously any horse or other animal upon any highway (Con. Stat. U. C. cap. 56, sec. 5); and if in this respect the act be contravened, the offender shall incur a penalty of not less than one dollar, nor more than twenty dollars, in the discretion of the convicting Justice, with costs. (*Ib.* sec. 11.)

(e) The power to make regulations as to pits, &c., and *other* places dangerous to travellers, may involve the right to some degree to interfere with private rights of property.

(f) The right of a Municipal Corporation to sell timber trees on a

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6. For selling the original road allowance to the parties next adjoining whose lands the same is situated, when a public road has been opened in lieu of the original road allowance, and for the site or line of which compensation has been paid, and for selling in like manner to the owners of any adjoining land any road legally stopped up or altered by the Council; and in case such parties respectively refuse to become the purchasers at such price as the Council thinks reasonable, then for the sale thereof to any other person for the same or a greater price; (*g*)

When the Council may stop up or sell a road allowance.

PERMITTING ROAD AND BRIDGE COMPANIES TO PASS, &c.

7. For regulating the manner of granting to Road or Bridge Companies permission to commence or proceed with roads or bridges within its jurisdiction, and for regulating the manner of ascertaining and declaring the completion of the work so as to entitle such companies to levy tolls thereon, and for regulating the manner of making the examinations necessary for the proper exercise of these powers by the Council; (*h*)

Granting privileges to Road or Bridge Companies.

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road allowance, so as to impart a vested interest and possession in the trees to the vendee, and in the soil as incidental, was at one time doubted. (*Cochran* v. *Hislop*, 8 U. C. C. P. 440.)

(*g*) Where a public road has been opened through private property, in lieu of an original allowance for road, for which compensation has been paid, the original allowance may be sold "to the *parties* next adjoining whose lands the same is situated." The allowance may adjoin on each side the lands of different parties, and it then becomes a question whether the Council is bound to sell to each one half of the allowance, or may sell the whole to one. Similar authority is conferred as to "any road legally stopped up and altered by the Council." If the parties entitled to preëmption refuse to purchase, then and only then is the Council authorized to sell to any *other* person. The statute does not require the Corporation to do more than close or stop up the road allowance. They are not required to fence it in or place any physical obstruction in the way of persons using it. They only put an end to the right of using it, and consequently to all obligation on the part of any person to respect it as a highway. The selling of the road allowance is one thing; the stopping up of a road allowance is an entirely different thing. The sale is by no means necessary to the extinction of the public easement. (*Johnston* v. *Reesor et al.*, 10 U. C. Q. B. 101; *In re Choate and Bletcher and the Municipality of the Township of Hope*, 16 U. C. Q. B. 424.) The Council may, under certain circumstances, stop up a road allowance, though not at the time in their contemplation to substitute another for it. (*Ib.*) Where it is contended by a private individual that a road allowance has been legally stopped up and conveyed to him, he must show that all the proceedings made necessary in that behalf have been taken by the Corporation. (*Winter* v. *Keown et al.*, 22 U. C. Q. B. 341.)

(*h*) The powers are, to pass by-laws:

1. For regulating the manner of granting to road or bridge companies permission *to commence* or proceed with roads or bridges within its jurisdiction.

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TAKING STOCK IN.

Taking stock in, or making loans to such companies.

8. For taking stock in, or lending money to, any such incorporated Road or Bridge Company, under and subject to the respective statutes in that behalf; (*i*)

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2. For regulating the manner of ascertaining or declaring *the completion* of the work, so as to entitle such companies to levy tolls.
3. For regulating the manner of making *the examination necessary* for the proper exercise of the powers of the Council.

The Legislature has conferred upon Municipal Corporations very extensive powers in relation to public highways. They are, as we have seen, empowered not only to divert but stop up existing highways and to open new ones. (Sec. 338.) Upon these Corporations, in the first place, is devolved the duty—and perhaps it may be found the option too—of constructing roads and bridges throughout the several localities represented by Municipal Councils. Before others can legally exercise these powers, permission is required from the local Municipal Corporation. The power to grant permission involves the power to withhold it; and if a road company were, without such permission, to attempt to interfere with the highways of the municipality, the Court of Chancery, upon an application made at the proper time, grounded on proper materials, no doubt would interfere by injunction. (*Attorney-General* v. *The Nepean Road Company*, 2 Grant, 526.) The power is not only to grant or withhold permission to commence, but, if granted, to make regulations for the completion of the work, and to make the examinations necessary for the proper exercise of these powers. So that the controlling and directing power is, as it were, vested in the Municipal Corporations.

No company, formed under the Joint Stock Companies Road Act, is allowed to commence any work until thirty days after the directors have served a written notice upon the head of the municipality in the jurisdiction of which such road is intended to pass or be constructed. (Con. Stat. U. C. cap. 49, sec. 10.) If the Municipal Council pass a by-law prohibiting, varying or altering any such intended line of road, the by-law shall have the same force and effect, and be obligatory upon all persons and upon the company, if the company proceed in the construction of the road, as much as if the provisions thereof were part of the said act. (*Ib.*) But if no by-law be passed within thirty days after service of the notice, then the company may proceed with the intended road, without being liable to any interruption or opposition from any source whatever. (*Ib.* sec. 11.) No such road, however, shall, under any circumstances, be constructed or pass within the limits of any city, incorporated town or village, except by permission, under a by-law, of the city, town or village, passed for the purpose. (*Ib.* sec. 6.)

(*i*) Any Municipal Council having jurisdiction within the locality through or along the boundary of which any such road passes, *may subscribe for, hold, sell and transfer stock* in any company formed under the general act (Con. Stat. U. C. cap. 49), or any former act passed for the like purpose, and may from time to time direct the Mayor, Reeve, Warden or other chief officer of the municipality, on behalf thereof, to subscribe for such stock in the name of the municipality, and to act for and on behalf of the municipality in all matters relating to such stock, and the exercise of the rights of the municipality as a stock-

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TOLLS ON, MAY BE GRANTED.

Granting right to take tolls, when.

9. For granting to any person, in consideration or part consideration of planking, gravelling or macadamizing a road, or of building a bridge, the tolls fixed by by-law to be levied on the work for a period of not more than twenty-one years after the work has been completed, and after such completion has been declared by a By-law of the Council authorizing tolls to be collected; and the grantee of such tolls shall, during the period of his right thereto, maintain the road or bridge in repair. (*j*)

TAKING MATERIALS.

Searching for and taking materials.

10. For searching for and taking such timber, gravel, stone or other material or materials as may be necessary for making and keeping in repair any road or highway belonging to any such Municipality; and the right of entry upon such lands, as well as the price or damage to be paid to any person for such materials, shall, if not agreed upon by the parties concerned, be settled by arbitration in the manner provided by this Act. (*k*)

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holder; and the Mayor, Reeve, Warden or other chief officer shall, whether otherwise qualified or not, be deemed a stockholder in the company, and may vote as such, subject to any rules and orders in relation to his authority made in that behalf by the by-laws of the Municipal Council or otherwise, and may vote according to his discretion in cases not provided for by the municipality. (*Ib.* sec. 63.) The Municipal Council may pay all the instalments upon the stock they subscribe for and acquire, out of any moneys belonging to the municipality, and which are not specially appropriated to any other purpose, and may apply the moneys arising from the dividends or profits on the stock, or from the sale thereof, to any purpose to which unappropriated moneys belonging to the municipality may be lawfully applied (*Ib.* s. 64).

So the Municipal Council of any locality through or along the boundary of which any such road passes, may, out of any moneys belonging to the municipality, and not appropriated to any other purpose, *lend money* to the company authorized to make the road, upon such terms and conditions as may be agreed on between the company and the municipality making the loan; and the municipality may recover the money so loaned, and appropriate the money so recovered to the purposes of the municipality. (*Ib.* sec. 65.) The Municipal Council may issue debentures for the payment of any loan negotiated by them with any such company, in the same manner, and subject to the same conditions, as required by law with regard to the issuing of other debentures. (*Ib.* sec. 66.)

(*j*) A grant for a term of years is authorized for a consideration stated. The grant is to be of the rates fixed by by-law to be levied, &c. The term is not to be more than twenty-one years; and the consideration, or part consideration, is to be that of planking, gravelling, or macadamizing the road, &c., or of building a bridge, &c.

(*k*) See note *b* to sub-sec. 1, *ante*.

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OLD ROAD ALLOWANCES.

When a road is substituted for an original allowance.

234. In case any one in possession of a concession road or side line has laid out and opened a road or street in place thereof without receiving compensation therefor, or in case a new or travelled public road has been laid out and opened in lieu of an original allowance for road, and for which no compensation has been paid to the owner of the land appropriated as a public road in place of such original allowance, the owner, if his lands adjoin the concession road, side line, or original allowance, shall be entitled thereto, in lieu of the road so laid out, (*l*) and the Council of the Municipality upon the report in writing, of its Surveyor, or of a Deputy Provincial Land Surveyor, (*m*) that such new or travelled road is sufficient for the purposes of a public highway, (*n*) may convey the said original allowance for road in fee simple to the person or persons upon whose land the new road runs, (*o*) and when any such original road allowance is, in the opinion of the Council useless to the public, and lies between lands owned by different parties the Municipal Council may, subject to the conditions aforesaid, sell and convey a part thereof to each of such parties

Conveying of former road allowance.

(*l*) So far, this section provides for two cases; first, where a person in *possession* of a concession road or side line has *himself* laid out and opened a road, &c., in place thereof; secondly, where a new or travelled road has been laid out and opened by, it is conceived, *the proper authority*, in lieu of an original allowance for road, &c. In either of these cases, if no compensation has been paid to the owner of the land, and if his lands adjoin the concession road, side line, or original allowance, he shall be *entitled* to the original road allowance in lieu of the road laid out. But though entitled, it would appear from what follows, that to make his title complete there must be a conveyance from the Municipal Council to him of the original road allowance. (See *Winter* v. *Keown*, 22 U. C. Q. B. 341.)

(*m*) If the Municipal Council has a surveyor in its employment, the report is to be by him; if not, by *any* deputy provincial land surveyor.

(*n*) The surveyor on making his report, cannot do better than adopt the very language of this section. He should in his report be particular to show the exact width of the road and the line it is to run. (*The King* v. *Sanderson*, 3 U. C. O. S. 103; see also *Purdy* v. *Farley*, 10 U. C. Q. B. 545.)

(*o*) The proper course would be, it is apprehended, to pass a by-law authorizing the conveyance, and afterwards, in pursuance thereof, to execute a formal deed of conveyance. (*In re Choate et al. and the Municipality of the Township of Hope*, 16 U. C. Q. B. 424.) The power to sell the allowance for road exists when, in the opinion of the Council, it is *useless* to the public; as to which see *Purdy* v. *Farley*, 10 U. C. Q. B. 545.

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as may seem just and reasonable; (*p*) and in case compensation was not paid for the new road, and the person through whose land the same passes does not own the land adjoining the original road allowance, the amount received from the purchaser of the corresponding part of the road allowance when sold, shall be paid to the person who at the time of the sale owns the land through which the new road passes. (*q*)

Compensation to party whose land is taken.

POSSESSION OF ROAD ALLOWANCES.

335. In case a person be in possession of any part of a Government allowance for road laid out adjoining his lot and enclosed by a lawful fence, and which has not been opened for public use by reason of another road being used in lieu thereof, or be in possession of any Government allowance for road parallel or near to which a road has been established by law in lieu thereof, such person shall be deemed legally possessed thereof, as against any private person, until a By-law has been passed for opening such allowance for road by the Council having jurisdiction over the same. (*r*)

Original allowance for roads when to be deemed legally possessed till a By-law is passed for opening them.

(*p*) The expression, "subject to the condition aforesaid," refers to the report of the surveyor, &c.

(*q*) If the person from whom the land for the new road is taken has not land adjoining the old road allowance, the allowance would be of little or no use to him. For this reason it is provided that in such case the allowance shall be sold, and the proceeds paid to the person whose land is taken for the new road.

(*r*) This section provides for the security of, first, a person in possession of any part of a Government allowance for road, &c., not opened for use "by reason of *another* road *being used* in lieu thereof;" and secondly, a person in possession of any Government allowance for road, parallel or near to which "a road *has been established by law*, in lieu thereof," &c. A person so circumstanced is to be deemed legally possessed as against any "*private person*," but not as against the Crown; and he is to be deemed so possessed "until a by-law has been passed for opening such allowance," &c. So that as well against private persons as Municipal Councils, until a by-law is passed for opening, &c., he is to be deemed legally possessed. By an act of 1810, all allowances for roads laid out by public authority were declared, whether opened or not, used or not, "public highways;" (50 Geo. III. cap. 1, sec. 12) but for the security of persons in possession of them when not used, it was in 1846 enacted that no allowance for road in possession of a private person should be opened unless upon notice to him, and the passing of an order of the proper municipal authority. (9 Vic. cap. 8.) Both these enactments are here in substance re-enacted. A person in possession of a road allowance where a new road has been opened or is used in lieu of it, to save himself from all disturbance, had better acquire a legal title thereto, pursuant to sec. 334 of this act. (See *Purdy* v. *Farley*, 10 U. C. Q. B. 545.)

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NOTICE OF BY-LAWS FOR OPENING SUCH ALLOWANCES.

By-law for opening, &c., roads, &c, to require notice.

336. But no such By-law shall be passed until notice in writing has been given to the person in possession, at least eight days before the meeting of the Council, that an application will be made for opening such allowance. (*s*)

AIDING COUNTIES IN MAKING ROADS AND BRIDGES.

By laws for—

337. The Municipal Council of every Township, City, Town, and Incorporated Village (*t*) may pass By-laws:

Aiding Counties in making roads and bridges.

1. For granting to the County or United Counties in which such Municipality lies, aid, by loan or otherwise, towards opening or making any new road or bridge on the bounds of such Municipality; (*u*)

Joint works with other Municipalities.

2. For entering into and performing any arrangement with any other Council in the same County or United Counties for executing, at their joint expense and for their joint benefit, any work within the jurisdiction of the Council; (*v*)

HIGHWAYS IN CITIES, TOWNSHIPS, TOWNS, AND INCORPORATED VILLAGES.

Streets in Cities, Towns

338. Every public road, street, bridge, or other highway in a City, Township, Town, or Incorporated Village, (*a*) shall

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(*s*) There must be a notice in writing, which must be given to the person in possession *at least* eight days before the meeting of the council. (See *In re Sams and the Corporation of Toronto*, 9 U. C. Q. B. 181.) The object is to prevent his being taken by surprise in regard to the intention to open the road allowance of which he is in possession.

(*t*) *Counties* are not here mentioned, because the object of the section is to enable the Councils of the Municipalities named to assist the Councils of Counties.

(*u*) As a rule, Councils of Municipalities less than counties have not power spontaneously to assess themselves for county purposes. (See note *k* to section 190.) The power given by this clause is to grant aid by loan or otherwise towards opening or making any new new road, *i. e.*, not stating whether the same may be done voluntarily or only upon the solicitation of the Council of the County.

(*v*) A bridge between two municipalities—townships, for example—divided by a stream, is a good example of a work that may be executed at "joint expense" and for "joint benefit."

(*a*) The roads of Joint Stock Companies are not such public roads or highways as the Legislature intended by this section. (*The Queen* v. *Brown and Street*, 13 U. C. Q. B. 536; but see *Port Whitby and Lakes Scugog, Simcoe, and Huron Road Company* v. *The Corporation of the Town of Whitby*, 18 U. C. Q. B. 40.)

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be vested in the Municipality, (*b*) subject to any rights in the soil which the individuals who laid out such road, street, bridge, or highway reserved, (*c*) and except any concession or other road within the City, Township, Town, or Incorporated Village, taken and held possession of by an individual in lieu of a street, road or highway laid out by him without compensation therefor. (*d*)

and Incorporated Villages how far vested in Municipalities.

339. Every such road, street, bridge and highway (*e*) shall be kept in repair by the Corporation, (*f*) and the default of the Corporation so to keep in repair, shall be a misde-

To be kept in repair by the Corporation, on pain of damages.

(*b*) The section vests in the Municipality the public roads, streets, bridges, and highways intended, but does not convey such a freehold and estate in the municipality as will entitle the municipality to maintain an action of ejectment. Every individual in the community has an equal right to use a public street or road. The municipal corporations cannot be deemed proprietors, and as such entitled to control the possession any more than any other corporation or person interested in the streets, roads, or highways. The property vested in the municipal corporations is a qualified one, to be held and exercised for the benefit of the whole body of the corporation. They hold as trustees for the public, and not by virtue of any title which confers possession sufficient to maintain an action of ejectment. (Per McLean, J., in *The Corporation of Sarnia* v. *The Great Western Railway Company*, 21 U. C. Q. B. 62); but may, it seems, sue for malicious injuries done to roads or bridges within their jurisdiction. (See *The Corporation of the Township of Thurlow* v. *Bogart*, 15 U. C. C. P. 1 ; *The Corporation of Wellington* v. *Wilson et al.* 14 U. C. C. P. 299; S. C. 16 U. C. C. P. 124.) Defendants, if intending to deny property or possession when sued by a Municipal Corporation as proprietors of a road claiming property or exclusive possession, should, by plea, put in issue the right of property of the plaintiffs. (*The Municipality of the Township of Sarnia* v. *The Great Western Railway Company*, 17 U.C. Q. B. 65.)

(*c*) It would seem that this section applies as much to highways dedicated by permissive user, as to highways created by some express act of dedication, such as a plan or map. (*Mitton* v. *Duck*, Q. B. M. T. 1866.)

(*d*) The right of a person who lays out a street on his own land without compensation in lieu of a street existing at the time, to take and hold possession of the latter, would, if this section were read alone, seem to be implied. But unless such a person hold a conveyance obtained under sec. 334, it is conceived that his right to hold possession of the road, if a government allowance, could be terminated under sec. 335 as therein provided. (*Purdy* v. *Farley*, 10 U. C. Q. B. 545.)

(*e*) See note *a* to sec. 338.

(*f*) A question may arise as to the proper effect to be given to the words "kept in repairs." The word repair is not to be here construed as if it meant "construction" in the first instance. (*The Queen* v. *The Board of Guardians of the Epsom Union*, 8 L. T. N. S. 383.) Besides,

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meanor punishable by fine in the discretion of the Court, (*g*) and the Corporation shall be further civilly responsible for all damages sustained by any person by reason of such default, (*h*) but the action must be brought within three months (*i*)

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the words keeping in repair, should be construed with a reasonable attention to circumstances. A new side line or concession line opened in a township thinly scattered, could scarcely be expected to be found in as perfect a condition as an old highway in a well settled township (per Robinson, C. J., in *Colbeck and Wife* v. *The Corporation of the Township of Brantford*, 21 U. C. Q. B. 276). Where the obligation to repair is clear, a writ of mandamus may be issued to the Corporation, commanding the repair. (*In re Municipality of Augusta and the Municipal Council of Leeds and Grenville*, 12 U. C. Q. B. 522.) But where it is in good faith disputed, the case is not a proper one for mandamus. (*The Queen* v. *The Municipal Corporation of the County of Haldimand*, 7 U. C. L. J. 266.) The obligation to repair roads and bridges is not confined to Municipal Corporations named in the preceding section, viz., cities, towns, townships, and villages, but extends also to Corporations of counties. (*Harrold* v. *The Corporation of the County of Simcoe and the Corporation of the County of Ontario*, 16 U. C. C. P. 43.)

(*g*) As a corporation cannot be compelled at the assizes or sessions to appoint an attorney, an indictment found against it must be, by certiorari, moved into one of the superior courts of common law, and then proceedings be had by *venire facias* and *distringas*, if necessary, to compel the corporation to appear and plead to the indictment. (Archbold's Crown Office, 171.) When issue is joined, a record may be made up and sent down for trial before a jury, as in an ordinary case. (*Ib.*)

(*h*) It is no defence to an action against a Municipal Corporation for negligence in the non-repair of a road, that they appointed a proper overseer of highways and gave him means and authority to keep the road in good order. The Municipal Corporation are, as it were, themselves the overseers of the highway, and on this principle bound to keep it in repair. They have not only the duty thrown expressly upon them of keeping highways in repair, but have all necessary powers given to them for enabling them to perform that duty. The Corporation must at their peril answer for the consequences of the duty not being performed. The negligence of their officers or servants is no answer (per Robinson, C. J., in *Colbeck and Wife* v. *The Corporation of the Township of Brantford*, 21 U. C. Q. B. 276.) Independently of the statute it would appear that there is a common law duty cast on Municipal Corporations to repair and keep in repair the roads which are within their jurisdiction, and for which they have power to raise the requisite funds. (See *The Corporation of Wellington* v. *Wilson et al.* 14 U. C. C. P. 299, S. C. 16 U. C. C. P. 124; *Harrold* v. *The Corporat on of the County of Simcoe and the Corporation of the County of Ontario*, 16 U. C. C. P. 43.) But is not their duty, either under the statute or at common law, to lay a plank from each man's house across a ditch to the street, and to keep such planks in repair. *McCarthy* v. *The Corporation of the Village of Oshawa*, 19 U. U. Q. B. 245.)

(*i*) The limitation as to time (three months) applies only to acts of omission, *i. e.*, non-repair, but not to acts of commission, as negligently

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after the damages have been sustained; (*j*) and this section shall not apply to any road, street, bridge or highway laid out without the consent of the Corporation by By-law, until established and assumed by By-law. (*k*)

LOCAL IMPROVEMENTS OF STREETS.

340. The Council of every City, Town and incorporated Village (*l*) may also pass By-laws for the following purposes: By-laws for

1. For assessing and collecting from the proprietors of real property, immediately benefited by making or repairing any pavement in any public way or place near to such property, such sums as may be necessary for so making or repairing the same; but this sub-section shall not apply to Cities; (*m*) Local rates for pavements.

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placing gravel on the sides of the road and taking no precaution to prevent persons passing along the road from running against these heaps, whereby a person so driving might run against the heaps and be thereby injured. (*Rowe* v. *The Corporation of Leeds and Grenville*, 13 U. C. Q. B. 575.) Where the section is applicable, no additional time is given to a legal representative to bring the action, owing to the death of the intestate, by reason of negligence within the meaning of the section. (*Turner* v. *The Corporation of the Town of Brantford*, 13 U. C. C. P. 109.)

(*j*) The statute begins to run from the occurrence of the accident, not from the death. (*Miller* v. *The Corporation of the Township of North Fredericksburgh*, 25 U. C. Q. B. 31.) So where plaintiff's mare fell through a bridge and was injured, but did not die for four months afterwards, when the action was brought it was held to be too late. (*Ib.*) As soon as the mare was injured by falling through the bridge, the plaintiff's cause of action was complete. His damages in the words of the statute were then and from that time sustained. The subsequent death of the mare was merely additional evidence of the extent of his damages. (*Ib.*) The damage was not the less because he did not at the time know its full extent. (*Ib.*)

(*k*) It is not every road, street or bridge in a Municipality, that is a *public* road, street or bridge, within the meaning of the preceding section and this section. If the road, street or bridge be laid out without the consent of the Corporation by by-law, it is not within the meaning of these sections made public, so as to render the Corporation liable for damages for non-repair, nor does it become public for the purposes of this section "until established and assumed by by-law."

(*l*) Neither counties nor townships are here mentioned; for the provisions of this section are such as are inapplicable to rural municipalities.

(*m*) The principle of local instead of general assessment is here sanctioned. The assessment for making or repairing any pavement, &c., may be imposed upon "the proprietors of real property immediately benefited ,&c. The sub-section is "not to apply to cities," because section 301 and following sections of this act make ample provision for local improvements in cities.

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Lighting, watering and sweeping streets.

2. For raising, upon the petition of at least two-thirds of the freeholders and householders resident in any street, square, alley or lane, representing in value one half of the ratable property therein, such sums as may be necessary for sweeping, watering or lighting the street, square, alley or lane, by means of a special rate on the ratable property therein; (*n*) but the Council may charge the general corporate funds with the expenditure incurred in such making or repairing, or in such sweeping, watering or lighting as aforesaid; (*o*)

Preventing obstructions in streets.

3. For regulating or preventing the encumbering, injuring or fouling, by animals, vehicles, vessels or other means, of any road, street, square, alley, lane, bridge or other communication; (*p*)

Removal of door steps, &c.

4. For directing the removal of door-steps, porches, railings or other erections or obstructions projecting into or over any road or other public communication, at the expense of the proprietor or occupant of the property connected with which such projections are found; (*q*)

For marking the boundaries of and naming streets.

5. For surveying, settling and marking the boundary lines of all streets, roads and other public communications, and for giving names thereto, and affixing such names at the corners thereof on either public or private property. (*r*)

Exclusive Jurisdiction over Roads.

COUNTIES.

What Roads.

Exclusive jurisdiction over certain roads by Counties.

341. The County Council shall have exclusive jurisdiction over all roads and bridges lying within any Township of the County, and which the Council by by-law assumes as a County road or bridge, until the By-law has been repealed by the

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(*n*) The objects here contemplated are sweeping, watering or lighting. Assessments may be made for one or other of those objects, "upon petition of at least *two-thirds* of the freeholders and householders resident in any street, &c., representing in value *one half* of the ratable property therein, &c." (See note to sec. 302.)

(*o*) The meaning is, that for the purposes mentioned, the Council *may* but is not bound to assess localities immediately benefited. If such be not done, of course the charge will fall upon "the general corporate funds."

(*p*) The power is not only to "regulate," but to "prevent."

(*q*) See sub-sec. 2 of sec. 296, and note thereto.

(*r*) To "survey" a street may be to open a new street; to "settle" a street may be to make certain the boundaries of a street already laid out; and this done, the boundary lines may be "marked."

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Council, and over all bridges across streams separating two Townships in the County, and over every road or bridge dividing different Townships, although such road or bridge may so deviate as in some places to lie, wholly or in part, within one Township: (*a*)

(*a*) It is by sec. 316 enacted that *the soil and freehold* of every highway or road, altered, amended or laid out according to law, shall be vested in Her Majesty, Her heirs and successors. It is by sec. 338 enacted that *every public road, street, bridge or other highway* (not saying soil or freehold), in a city, township, town or incorporated village, shall be vested in the Municipality, *subject to any rights in the soil* which the individuals who laid out such road, street, bridge or highway reserved. It is by the section here annotated, enacted that the County Council shall have *exclusive jurisdiction* over the roads and bridges mentioned, which may include roads and bridges such as mentioned in sec. 316 and sec. 338. The editor endeavored in note *j.* to sec. 316 to reconcile secs. 316 and 338. It is now necessary, if possible, to reconcile the section under consideration, with those sections.

The section under consideration, it will be observed, omits all reference to "the soil and freehold" as provided for in sec. 316 and 338, and omits the use of the word "vest" as used in the latter section. It simply declares that as to the roads and bridges intended, the County Council (not corporation) shall have *exclusive jurisdiction*. The reason which probably led the Legislature to confer the exclusive jurisdiction upon counties over county roads and bridges, without vesting the soil or property of them in the counties, was, that the county has no peculiar or exclusive locality constituting the county, apart from the separate municipalities which compose it; and it might seem inconsistent after vesting every public road, street, bridge or other highway, in a city, township, town, or incorporated village in the Crown or in the particular local municipality, to vest any of the same highways in the corporation of the county, and therefore, "the exclusive jurisdiction" was alone conferred upon the County Council, as the grant of a power sufficiently large for all practical purposes, and indicating that the local municipality or municipalities are to be excluded from all interference in the exercise of that power. (Per Adam Wilson, J., in *The Corporation of the County of Wellington* v. *Wilson et al.* 16 U. C. C. P. 130.)

The exclusive jurisdiction is conferred as to the following roads and bridges:

1. All roads and bridges lying *within* any township of the county *and* which the Council of the county assumes as a county road or bridge.
2. All bridges across streams separating two townships in the county.
3. Every road or bridge dividing different townships, although such road or bridge may so deviate as in some places to lie wholly or in part within one township.

It would appear to be necessary for the County Council to pass a by-law assuming a road or bridge only where the road or bridge is *within* any township. In all cases of roads or bridges *dividing* different townships in the county, or bridges across streams *separating* two townships in the county, the County Council has exclusive jurisdiction

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TOWNSHIP BOUNDARY LINES.

To be opened, &c., by Township Councils.

1. All Township boundary lines not assumed by the County Council shall be opened, maintained and improved by the Township Councils; (*b*)

If any Council fails to perform its duty.

2. Whenever Township Councils fail to maintain such roads, in the same way as other Township roads, by mutual agreement as to the share to be borne by each, it shall be competent for one or more of such Councils to apply to the County Council to enforce joint action on all Township Councils interested; (*c*)

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by authority of the statute, without any by-law whatever (per Adam Wilson, J., in *The Corporation of Wellington* v. *Wilson et al.*, 14 U. C. C. P. 308.) The County Council has no jurisdiction to assume as a county road any road or bridge within any town or incorporated village. Cities, towns, and villages are not mentioned in this connection, and consequently roads and bridges *within* such municipalties remain exclusively under the jurisdiction of each local municipality, within which they are respectively situated (per Burns, J., in *The Churchwardens of St. George's Church* v. *The Corporation of the County of Grey*, 21 U. C. Q. B. 265.)

(*b*) The sub-sections which follow are new and their meaning in connection with the foregoing anything but clear. By "Township Boundary *line*" is probably meant, a road forming a township boundary. (See sub-sec. 7.) This (if not assumed by the County Council) is to be opened, maintained and improved by the Township Councils.

It will appear from what is stated in the preceding note, that all roads dividing *different* townships are under the exclusive jurisdiction of the County Council, whether assumed by by-law or not. If this sub-section is to be looked upon as extending to roads dividing different townships and so forming a boundary to each, their exclusive jurisdiction "is not to be deemed as including any obligation to open, maintain or improve, which obligation is now thrown upon the Township Councils." It does not extend to township boundaries, which are also county boundaries; for as to the latter, provision is made by sub-sec. 7 and following sub-sections. The object of these sub-sections is as much as possible to relieve counties of the burden of keeping roads in repair, and throw that burden upon the local municipalities adjacent thereto. The wisdom of such a policy is doubtful. To cast the burden upon a particular locality, of keeping in repair a county road used by the whole county, seems unfair and unreasonable. (See remarks of Adam Wilson, J., in *Rose and the Corporation of the United Counties of Stormont, Dundas and Glengary*, 22 U. C. Q. B. 537.)

(*c*) The roads here intended are "the Township Boundary lines," mentioned in the preceding sub-section. Apparently the intention is to embrace roads dividing townships; otherwise there would be no necessity for a provision as "to the share to be borne by each" in respect of the obligation to open, repair and improve. It is true that in the case of townships adjacent to an unsurveyed track, the provision would be in terms applicable, whether townships were divided or not by "the boundary line." But the probability is, that the Legislature

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If all the Councils fail.

3. In cases where all the Township Councils interested neglect or refuse to open up and repair such lines of road in a manner similar to the other local roads, it shall be competent for a majority of the rate-payers resident on the lots bordering on either or both sides of such line, to petition the County Council to enforce the opening up or repair of such lines of road by the Township Councils interested; (*d*)

Duty of County Council on petition.

4. It shall be the duty of a County Council receiving such petition, either from Township Councils or from rate-payers, as in the preceding sub-section mentioned, to consider and act upon the same at the session at which the petition is presented; it shall be the duty of the County Council to determine upon the amount which each Township Council interested shall be required to apply for the opening or repairs of such lines of road, or to direct the expenditure of a certain proportion of statute labour, or both, as may seem necessary to make the said lines of road equal to other local roads; (*e*)

Amount to be furnished by each Township.

Commissioners to enforce order of County Council as to such roads.

5. It shall be the duty of the County Council to appoint a Commissioner or Commissioners to execute and enforce their orders or by-laws relative to such roads; provided always, that if the representatives of any or all of the Townships interested shall intimate to the Council or to the Commissioner or Commissioners so appointed, their intention to execute the work themselves, then such Commissioner or Commissioners shall delay proceeding for a reasonable time; but if the work be not proceeded with during the favourable season by the

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meant the sub-section to have a more extended operation. This supposition is confirmed by a reference to sub-sec. 3, which gives certain powers to the rate-payers bordering "on either or *both* sides of such line." The County Council is, in relation to such townships, as it were, made the arbiter. Power is given to the County Council, on the application of any township interested, "to enforce joint action" on all interested. The application should be by petition.

(*d*) The preceding sub-section supposes at least one of the townships interested disposed to do what is required of it. But if all interested fail to perform the duty cast upon them, a majority of the rate-payers resident on the lots bordering on either or both sides of such line, may petition the Council to enforce the opening up or repair of such line, by the Township Councils interested. The time and mode of so doing are provided for by the next sub-section.

(*e*) In order that time may not be unnecessarily lost, it is made the duty of the County Council "to consider and act upon" the petition "at the session at which the petition is presented." The action may be either by directing the expenditure of money, or the doing of statute labour, or both, as may seem necessary, "to make the said lines of road equal to other local roads." (See note *f* to sec. 389.)

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Township officers, then the Commissioners shall undertake and finish it themselves; (*f*)

Payments to be made by Township Councils.

6. Any sum of money so determined upon by the County Council as the portion to be paid by the respective Townships, shall be paid by the County Treasurer on the order of the Commissioner or Commissioners, and the amount retained out of any money in his hands belonging to such Township, but if there be not at any time before the striking of a County rate any such moneys belonging to such Township in the Treasurer's hands, an additional rate shall be levied by the County Council against such township sufficient to cover such advances; (*g*)

COUNTY BOUNDARIES.

Township boundaries, being also County boundaries.

7. Township boundary-line roads, forming also the County boundary lines, and not assumed or maintained by the respective Counties interested, shall be maintained by the respective Townships bordering on the same; (*h*)

When the several Townships interested cannot agree

8. Whenever the several townships interested in the whole or part of any line road, are unable mutually to agree as to their joint action in opening or maintaining such line road, or portion thereof, one or more of such Township Councils may apply to the Wardens of the bordering counties to determine

Wardens and County Judge to decide.

jointly the amount which each township shall be required to expend either in money or Statute labour, or both, and the

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(*f*) The mere order or direction of the County Council, without powers to enforce it against the townships interested, would be of little avail. Power is therefore given to County Councils to appoint a commissioner or commissioners "to execute and enforce their orders or by-laws relative to such roads." This is as it were *in terrorem;* for it is also provided that if the representatives (probably meaning Reeves or Deputy Reeves) of any or all of the townships interested shall intimate to the Council or to the commissioner or commissioners their intention to execute the work themselves, then the commissioner or commissioners may delay their proceeding. But the delay is only to be for "a reasonable time." If the work be not proceeded with during "the favorable season" by the township officers, then the commissioners shall undertake it, and finish it themselves.

(*g*) Where commissioners do the work, some provision is necessary for payment. It is therefore provided that the money shall be paid by the County Treasurer. "on the order of the commissioner or commissioners." When so paid, the money is to be retained by the County Treasurer out of any money in his hands belonging to the township. If none, then the County Council may levy against such township a rate "sufficient to cover such advances."

(*h*) This is an extension to townships adjacent to roads which are boundary lines of different counties, of the principles contained in the preceding sub-sections as to roads which are the boundary lines of several townships in the same county.

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mode of expenditure on such road; the County Judge of the county in which the township first making the application is situate shall, in all cases, be the third abitrator when such Wardens are unable to agree; (*i*)

Meeting of Wardens.

9. It shall be the duty of the Wardens of the Counties interested to meet within twenty-one days from the time of receiving such application for the determination of the matter in dispute; the Warden of the County in which the Township first making the application is situated, shall be the convener of the meeting; and it shall be his duty to notify the Warden of the other County and County Judge of the time and place of meeting, within eight days of the time of his receiving such application; (*j*)

Who to convene, &c.

What the Wardens and County Judge shall determine.

10. At such meeting, the Wardens and County Judge or any two of them, shall determine on the share to be borne by the respective townships, of the amount required on the part or parts to be opened or repaired by each or both, and shall appoint a Commissioner or Commissioners to superintend such work, and it shall be the duty of the Township Treasurer to pay the orders of such Commissioners to the extent of the sum apportioned to each; and path-masters controlling the Statute labour on the lots adjoining such line, on the portion of such line to be opened or repaired, shall obey the orders of such Commissioner or Commissioners in performing the Statute labour unexpended; (*k*)

(*i*) The County Council is, as it were, made the arbiter between townships in the same county. (See note *c*, above.) But where the townships are of different counties, the Wardens of the counties are by this sub-section made the arbiters. Their power as such arbiters is "to determine jointly the amount which each township shall be required to expend, either in money or statute labour, or both, *and* the mode of expenditure." In case the Wardens are unable to agree, the County Judge is made the direct arbitrator.

(*j*) In order that time may not be unnecessarily lost, it is made the duty of the Wardens to meet "within twenty-one days" from the time of receiving the application. The initiative rests upon the Warden of the county in which the township that first made the application is situate. He is the convener of the meeting. It is made his duty to notify the Warden of the other County *and* the County Judge of the time and place of meeting. This he must do "within eight days" of the time of his receiving the application.

(*k*) By sub-section 8 it is provided that the County Judge is to be the third arbitrator, "when such Wardens are unable to agree." And yet it is provided by subsection 9, that the convening Warden shall (before any opportunity to agree or disagree) notify "the other Warden and the County Judge" of the time and place of meeting; and here it is provided that "the Wardens *and* County Judge, or any two

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County Council may assume the road, &c.

11. Any County Council may assume, make and maintain any Township or County Line at the expense of the County or may grant such sum or sums from time to time for the said purpose as they may deem expedient; (*l*)

Bridges over rivers being boundaries.

12. It shall be the duty of County Councils to erect and maintain Bridges over Rivers forming Township or County Boundary Lines, and in the case of County Councils failing to agree on the respective portions of the expense to be borne by the several counties, it shall be the duty of each County Council to appoint arbitrators as provided by this Act, to determine the amount to be so expended, and such award as may be made shall be final. (*m*)

ROADS ASSUMED TO BE MACADAMIZED.

Roads assumed to be macadamized, &c.

342. When a County Council assumes by By-law any Road or Bridge within a Township as a County Road or Bridge, (*n*) the Council shall, with as little delay as reasonably may be, and at the expense of the County, cause the road to

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of them," shall determine, &c., as if the County Judge were to be third arbitrator, whether the Wardens disagreed or not. In these respects there is an apparent inconsistency between the sub-sections mentioned.

The duties of the arbiters are:

1. To *determine* on the share to be borne by the respective townships of the amount required on the part or parts to be opened or repaired by each or both.
2. To *appoint* a commissioner or commissioners to superintend such work.

It is the duty of the Township Treasurer to pay the orders of the commissioners to the extent of the sum apportioned to each township.

Besides, path-masters controlling statute labour on lots adjoining the line, on the portion of the line to be opened or repaired, must obey the order of the commissioner or commissioners in performing the statute labour unexpended.

(*l*) The object of these sub-sections, as explained in note *c* above, is as much as possible to relieve counties from the burden of opening or repairing roads. But still, any County Council may, under this sub-section, either assume, make and maintain *any* township or county line at the expense of the county, or grant such sum or sums from time to time for the said purpose as they may deem expedient.

(*m*) The obligations of County Councils in regard to bridges remain unimpaired. The County Councils must not only erect but maintain bridges over rivers forming township or county boundaries; and where several County Councils are interested, there must be an arbitration, unless they mutually agree. The power of the arbitrators is, "to determine the amount to be so expended. If the award be in other respects valid, "it shall be *final*."

(*n*) See note *a* to sec. 341.

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be planked, gravelled or macadamized, or the Bridge to be built in a good and substantial manner. (*o*)

CERTAIN POWERS OF JUSTICES IN SESSIONS TRANSFERRED.

Certain powers of Justices in Sessions transferred.

343. All powers, duties and liabilities which at any time before the first day of January, one thousand eight hundred and fifty, belonged to the Magistrates in Quarter Sessions, with respect to any particular Road or Bridge in a County, and not conferred or imposed upon any other Municipal Corporation, shall belong to the Council of the County, or in case the Road or Bridge lies in two or more Counties, to the Council of such Counties; and the neglect and disobedience of any regulations or directions made by such Council or Councils, shall subject the offenders to the same penalties and other consequences as the neglect or disobedience of the like regulations or directions of the Magistrates would have subjected them to. (*p*)

GENERAL POWERS OF COUNTIES RESPECTING HIGHWAYS.

By-laws for—

344. The Council of every County (*q*) shall have power to pass By-laws for the following purposes:

Sale of original allowances, &c.,

1. For stopping up, or stopping up and sale, of any original allowance for roads or parts thereof within the County, which

(*o*) It is not in the power of a County Council to assume a road or bridge as a county road or bridge, and then cast upon a local municipality the burden of making the road or bridge, repairing or maintaining it. (*In re Rose and the Corporation of the United Counties of Stormont, Dundas and Glengary*, 22 U. C. Q. B. 531.)

(*p*) This section is not to be understood as *limiting* the responsibility of counties to just the same measure of responsibility to which magistrates in Quarter Sessions were subjected. This is not the purpose of the clause. It is a transfer clause or clause of conveyance from the Magistrates to the County Councils of all the powers, &c., and on the completion of such transfer the Councils are to hold the property operated upon in like manner and subject to the general duties and liabilities applicable to their other property. The section too, it will be seen, applies only to such *particular* roads and bridges as were not conferred or imposed on any other Municipal Council; but it is difficult to say what roads or bridges can be within it, when secs. 317, 329, 338 and 339 have already conferred or imposed every road and bridge upon some municipality, excepting those Government works specially exempted under sec. 318. The section under consideration was, it is presumed, inserted *ex abundanti cautela*, and not because there was any case or special property upon which it can really operate (per Adam Wilson, J., in *Harrold* v. *The Corporation of the County of Simcoe and the Corporation of the County of Ontario*, 16 U. C. C. P. 50, 51.) Counties are liable at common law for non-repair of county roads. (*Ib.*)

(*q*) Lesser municipalities than counties have power to pass by-laws for some of the purposes hereinafter mentioned.

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for roads in certain cases.

is subject to the sole jurisdiction and control of the Council, and not being within the limits of any Village, Town or City within or adjoining the County; (*r*) but the By-law for this purpose shall be subject to the three hundred and twenty-third section of this Act; (*s*)

Preventing furious driving.

2. For preventing immoderate riding or driving of horses or other cattle on highways, whether Township or County highways; (*t*)

Roads within or between several Municipalities.

3. For opening, making, preserving, improving, repairing, widening, altering, diverting, stopping up and pulling down, drains, sewers, water-courses, roads, streets, squares, alleys, lanes, bridges or other public communications, running or being within one or more Townships, or between two or more Townships of the County, or between the County, and any adjoining County or City, or on the bounds of any Town or Incorporated Village within the boundaries of the County, as the interests of the inhabitants of the County in the opinion of the Council require to be so opened, made, preserved and improved, and for entering upon, breaking up, taking or using any land in any way necessary or convenient for the said purposes, (*u*) subject to the restrictions hereinbefore contained.(*v*)

(*r*) The stopping up of a highway is one thing, and the sale of it another. The sale is in no way essential to the effective stopping up of the highway. The power is to pass by-laws for stopping up, *or* stopping up *and* sale, &c. (See note *r* to sec. 323.) But the powers conferred, so far as counties are concerned, are limited to an original allowance for roads or parts thereof within the county, and only to such as are subject to the sole jurisdiction and control of the County Council, and not being within the limits of any village, town or city within or adjoining the county.

(*s*) See sec. 323, and notes thereto.

(*t*) So as to prevent immoderate driving, the Council is invested with the jurisdiction necessary to pass by-laws for the purpose over all highways, whether township or county highways. The jurisdiction apparently does not extend to highways in towns or incorporated villages, and certainly not in cities, for cities for such purposes are deemed counties.

(*u*) The powers of County Councils under this clause extend to drains, sewers, water-courses, roads, streets, &c.:—

1. *Within* one or more townships.
2. *Between* two or more townships.
3. *Between* the county and adjoining county or city.
4. *On the bounds* of any town or incorporated village.

See note *a* to sec. 341

(*v*) Some of the provisions here referred to are secs. 318, 319, 320, 321, 322, 323 and 325.

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4. For protecting and regulating of Booms on any stream or river for the safe-keeping of timber, saw-logs and staves within the municipality; (*w*) Protecting Booms.

TREES OBSTRUCTING HIGHWAYS.

5. For directing that, on each or either side of a highway passing through a wood, the trees, (unless they form part of an orchard or a shrubbery, or have been planted or reserved expressly for ornament or shelter,) shall, for a space not exceedingly twenty-five feet on each side of the highway, be cut down and removed by the Proprietor within a time appointed by the By-law, or, in his default, by the County Surveyor or other Officer in whose division the land lies; and, in the latter case, for authorizing the trees to be used by the Overseer or other Officer for any purpose connected with the improvement of the highways and bridges in his division, or to be sold by him to defray the expenses of carrying the By-law into effect; (*x*) May direct the trees to be cleared on each side of highways.

LOCAL RATES FOR SPECIAL IMPROVEMENTS.

6. For levying by Assessment on all ratable property within any particular part of one or parts of two Townships to be described by metes and bounds in the By-law, in addition to all other Rates, a sum sufficient to defray the expense of making, repairing or improving any Road, Bridge, or other public work, lying within one township or between parts of such two Townships, and by which the inhabitants of such parts will be more especially benefited; provided that the provisions of this sub-section shall not be held to apply to any Local rates for special improvements.

(*w*) This is a new sub-section, it authorises by-laws:—

For the *protection* and *regulation* of booms on any stream or river, and

For the *safe-keeping* of timber, saw logs and staves, within the municipality.

(*x*) Powers precisely similar to those by this clause conferred on counties, are also by this act conferred on *townships*. (Sec. 345, sub-sec. 3.) This may cause some conflict of jurisdiction. With respect to counties, if the proprietor neglect or refuse, within the time limited for the purpose, to remove the trees, it is enacted that the removal may be effected by "*the County Surveyor*," in which case the by-law may authorize the trees to be used "*by the Overseer or other officer*," for any purpose connected with the improvement of the highways, &c. With respect to townships, these powers are to be exercised by "the Overseer of Highways." (Sec. 345, sub-sec. 3.) Where the word "overseer" occurs in the section here annotated, it is presumed that it also means "overseer of highways."

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road, bridge or other public work within the limits of any Town or incorporated Village Municipality; (*y*)

Proceeding to obtain a By-law for.

Notice to be given.

7. But no such By-law, as referred to in the last preceding sub-section, shall be passed, except—1. Upon a petition signed by at least two thirds of the Electors who shall be rated for at least one half of the value of the property within those parts of such Townships which are to be affected by the By-law; (*z*) 2. Nor unless a printed notice of the petition, with the names of the signers thereto, describing the limits within which the By-law is to have force, has been given for at least one month, by putting up the same in four different places within such parts of the Township and at the places for holding the sittings of the Council of each Township, whether it be within such parts or not, and also by inserting the same weekly for at least four weeks in some newspaper, if any there be published in the County, or if there is no such newspaper, then in a newspaper published in some adjoining County; (*a*)

AIDING TOWNSHIPS, &c., IN MAKING ROADS AND BRIDGES.

For aiding in making roads and bridges.

8. For granting to any Town, Township or incorporated Village in the County, aid, by loan or otherwise, towards opening or making any new road or bridge in the Town, Township or Village, in cases where the Council deems the County at large sufficiently interested in the work to justify such assistance, but not sufficiently interested to justify the Council in at once assuming the same as a County work. (*b*)

(*y*) The power to levy rates is in general on all the ratable property in the particular township. The exception here is in the case of local improvements, where the inhabitants of a particular part of the township, or parts of two townships, will be more especially benefited. The local rate must be levied by by-law, subject to the provisions contained in the next subsection.

(*z*) A petition for local assessment in a city, town or incorporated village, must be signed by "*resident* freeholders and householders," but in a county by "electors," who must be male freeholders or householders, assessed for a given sum, but not necessarily residents (s. 340).

(*a*) Here too there is a difference between counties and other municipalities in respect to the subject matter of this section; for although as to counties publication of the petition in the manner above directed is required, no publication is necessary as to cities, towns or incorporated villages. (Sec. 340.)

(*b*) The power of a County Council to grant aid for the purposes mentioned exists only where the Council deems the county at large sufficiently interested "to justify the assistance," but not so much so as to justify the Council in at once assuming the work as a county work. The line of demarcation may not be in all cases easily drawn, but the decision rests with the Council, and for this reason cannot cause much difficulty.

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TOWNSHIPS.

345. The Council of every Township (*c*) may pass By-laws: By-laws for—

AIDING COUNTIES IN MAKING ROADS.

1. For granting to any adjoining County aid in making, opening, maintaining, widening, raising, lowering or otherwise improving any highway, road, street, bridge or communication lying between the Township and any other Municipality, (*d*) and for granting like aid to the County in which the Township lies in respect of any highway, road, street, bridge or communication within the township assumed by the County as a County work, or agreed to be so assumed on condition of such grant; (*e*) Aiding County in making roads.

ORIGINAL ROAD ALLOWANCES.

2. For the stopping up and sale of any original allowance for road or any part thereof within the Municipality, and for fixing and declaring therein the terms upon which the same is to be sold and conveyed; (*f*) but no such By-law shall have any force (1) unless passed in accordance with the three hundred and twenty-third section of this Act, nor (2) until confirmed by a By-law of the Council of the County in which the Township is situate, at an ordinary session of the County Council, held not sooner than three months, nor later than one year next after the passing thereof; (*g*) Stopping up and sale of original road allowance.

TREES OBSTRUCTING HIGHWAYS.

3. For directing that, on each or either side of a highway passing through a wood, the trees (unless they form part of an orchard or shrubbery, or have been planted expressly for Ordering trees to be cut down on each side of a road.

(*c*) Counties have powers to pass by-laws for some of the purposes hereinafter mentioned.

(*d*) The power of a township to aid a county in which it is *not* situate, in the making, opening, &c., any highway, &c., does not extend to all roads, &c., but only such as are lying *between* the township granting the aid and any other municipality, though in a different county.

(*e*) The grant in aid of the county in which the municipality granting the aid is situate, may be made in respect of any highway, &c., *within* the township assumed by the county as a county work, &c.

(*f*) The stopping up is one thing, and the sale another. The allowance may be effectually stopped up, though not sold. (See note *r* to sec. 323.) The powers must be exercised by by-law.

(*g*) The difference between the exercise of the powers between a Township Council and a County Council is, that while the by-law of the latter is absolute, the by-law of the former is not effectual until confirmed. (See *Boulton and the Town Council of Peterborough*, 16 U. C. Q. B. 380; *Winter* v. *Keown et al.*, 22 U. C. Q. B. 241.)

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ornament or shelter) shall, for a space not exceeding twenty-five feet on each side of the highway, be cut down and removed by the proprietor within a time appointed by the By-law, or, on his default, by the Overseer of Highways, or other officer in whose division the land lies; and, in the latter case, for authorizing the trees to be used by the Overseer or other officer for any purpose connected with the improvement of highways and bridges in his division, or to be sold by him to defray the expenses of carrying the By-law into effect;

Granting money for that purpose.

4. For granting, out of Township funds, any sum of money that may be necessary to pay for the cutting down and removing the timber in the third sub-section mentioned; (*i*)

Purchasing wet lands from Government.

5. For purchasing from the Government or any Corporation or person, at a price (in case of Crown lands, to be fixed upon by the Governor-in-Council, and which price the Governor-in-Council is hereby authorized to fix), all the wet lands at the disposal of the Crown or such Corporation or person in any such Township; and such lands may be sold accordingly to the Corporation of any such Township; (*j*)

Raising money for that purpose.

6. The purchase and draining of such lands shall be one of the purposes for which any such Corporation may raise money, by loan or otherwise, or for which they may apply any of its funds not otherwise appropriated; (*k*)

Disposing of such land.

7. The Corporation of any such Township may possess and hold the land so purchased, and may, whenever they deem it expedient, sell or otherwise depart with or dispose of the same

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(*i*) This and the four following sub-sections are new. The power to pass by-laws for the purpose of cutting down trees on each side of a highway would, one would suppose, involve the right to pay out of township funds the money necessary for that purpose. But to avoid doubt, the right is here in express terms conferred.

(*j*) Municipal Corporations are not in general authorized to deal in lands. The Council of every county, township, city, town and incorporated village may pass by-laws for obtaining such real and personal property as may be required for the use of the Corporation. (Sec. 246, sub-sec. 1.) The additional power is here conferred on the Councils of townships, to purchase all the wet lands at the disposal of the Crown or any corporation, or person in any township.

(*k*) Unless power were conferred to drain the wet lands, the purchase of which is authorized by the preceding sub-section, the lands would be of little value to the Township Corporation. Here it is declared that the purchase *and* draining of such lands shall be one of the purposes for which any Township Corporation may raise money by loan or otherwise, or for which it may apply any of its funds not otherwise appropriated.

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by public auction, in like manner as they may by law sell or dispose of other property, and upon such terms and conditions, and with such mortgages upon the land so sold, or other security for the purchase money or any portion thereof, as they may think most advantageous; (*l*)

8. The proceeds of the sale of such lands shall form part of the general funds of the Municipality. (*m*) Proceeds of sale.

WHEN ROADS IN VILLAGES OR HAMLETS MAY BE SOLD BY TOWNSHIP COUNCILS.

346. In case the Trustees of any Police Village, (*n*) or fifteen of the inhabitant householders of any other unincorporated village or hamlet consisting of not less than twenty dwelling houses standing within an area of two hundred acres, (*o*) petition the Council of the Township in which the village or hamlet is situate, (*p*) and in case the petition of such unincorporated village or hamlet not being a Police Village, is accompanied by a certificate from the Registrar of the County within which the Township lies, that a plan of the village or hamlet has been duly deposited in his office according to the registry laws, (*q*) the Council may pass a By-law to stop up, sell and convey, or otherwise deal with any original allowance for road lying within the limits of the village or hamlet, as the same shall be laid down on the plan, but subject to all the When roads in Police Villages may be sold by Township Councils.

(*l*) The powers to purchase and drain would not be of much value without a power to sell when drained. But the sale can only be by public auction. This is intended as a provision against favouritism.

(*m*) As the purchase money may be taken from any funds not otherwise appropriated, or raised by way of loan or otherwise, payable out of the general funds of the municipality, it is only right that the proceeds of sale should form part of the general funds of the municipality.

(*n*) Of whom there should be three in number. (Sec. 68.)

(*o*) *Inhabitant householders.* See notes *q* and *r* to sec. 75.

(*p*) Though a village and hamlet are in common acceptation synonymous terms, strictly speaking "hamlet" signifies a little village, or a collection of houses less than a village.

(*q*) Whenever any land has been surveyed or sub-divided into town or village lots or other lots, so differing from the manner in which such land was surveyed or granted by the Crown, that the same cannot or is not by the description given of it, easily and plainly to be identified, the person, corporation or company making such survey or sub-division, must within three months from the date of the survey or sub-division, lodge with the Registrar a plan or map of the same, showing the number of the township or town lots, and range or concession, the number or letters of town or village lots, and names of streets, the measurement and magnetic bearings of each lot, on a scale of not less than one inch to every four chains. (29 Vic. cap. 24, sec. 78.)

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restrictions contained in this Act with reference to the sale of original allowances. (*r*)

When Village is partly in each of two townships.

347. The last section shall apply to a village or hamlet situate in two Townships whether such Townships are in the same or in different Counties, and in such case the Council of each of the Townships shall have the power thereby conferred, as to any original allowance for road lying within that part of the village or hamlet which, according to the registered plan, is situate within such Township. (*s*)

REGISTRATION OF BY-LAWS FOR OPENING ROADS ON PRIVATE PROPERTY.

By-laws under which Roads are opened on private property to be registered as to By-laws already passed.

348. All By-laws hereafter to be passed by any Municipal Council, under the authority of which any street, road or highway shall be opened upon any private property, (*t*) shall, before the same becomes effectual in law, (*u*) be duly registered in the Registry Office of the county where the land is situate, (*v*) and for the purpose of registration, a duplicate original of such By-law shall be made out, certified under the hand of the clerk and the seal of the municipality, and shall be registered without any further proof; (*w*) and all By-laws heretofore passed, and all orders and resolutions of the Quarter Sessions heretofore passed, under the authority of which any street, road or highway has already been opened upon any private property, may at the election of any party interested, and at

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(*r*) See secs. 323, 334.

(*s*) The last section in terms applies only to a village or hamlet situate in one and the same township, as well as in one and the same county, but as villages are often formed at the corners of different townships, which may or may not be in different counties, it is by this section made to extend to "a village or hamlet situate in *two* townships, whether such townships are in the same county or in different counties." The extension is scarcely sufficient, for there are villages formed of parts of *more* than two townships.

(*t*) Taken from sec. 61 of the new Registry Act, 29 Vic. cap. 24.

(*u*) This is a new requirement. It is now essential to the validity of a by-law under the authority of which a street, road or highway shall be opened through private property, that the by-law be registered as required by this section.

(*v*) Whenever the Registry Office is only for a riding less than a county, it is presumed that the by-law should, in order to its validity, be registered in the Registry Office of such riding.

(*w*) It is only a duplicate original of the by-law that can be registered, and not only so, but such duplicate original must be certified under the hand of the Clerk and seal of the municipality. (See note *e* to sec. 198.) If so certified, it may be registered without further proof. If not so certified, it is apprehended the Registrar may reject it.

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the cost and charges of such party or municipality, be also duly registered, (*x*) upon the production to the Registrar of a duly certified copy of such By-law under the hand of the Municipal Clerk and seal of such municipality, (*y*) or by a duly certified copy of such order or resolution of such Quarter Sessions, given under the hand of the Clerk of the Peace (as the case may be.) (*z*)

RAILWAYS.

349. The Council of every Township, County, City, Town and Incorporated Village (*a*) may pass By-laws: Municipal Councils may make By-laws:

TAKING STOCK IN OR AIDING RAILWAY COMPANIES.

1. For subscribing for any number of shares in the capital stock of, or for lending to or guaranteeing the payment of any sum of money borrowed by an incorporated Railway Company, to which the eighteenth section of the statute fourteenth and fifteenth Victoria, chapter fifty-one (the Railway Clauses Consolidation Act), or the sections of the Consolidated Statute of Canada respecting Railways, numbered seventy-five to seventy-eight, have been or may be made applicable by any special Act; (*b*) For taking stock in Railways or guaranteeing debentures;

(*x*) In the case of streets, &c., *hereafter* opened, the section is imperative. In the case of streets, &c., opened *heretofore*, the duty is optional. The option may be exercised by any party interested. If exercised, it is to be at the costs and charges "of such party or the municipality."

(*y*) See note *w* ante.

(*z*) In the case of a certified copy of an order or resolution of Quarter Sessions, no seal is made necessary. If given under the hands of the Clerk of the Peace, no more will be required for purposes of registration.

(*a*) It will be observed that this section in terms extends to all Municipal Corporations.

(*b*) The aid may be—

1. By *subscription* for any number of shares in the capital stock of the company.
2. By *lending* money to the company.
3. By *guaranteeing* the payment of any sum of money borrowed by the Company.

The subscription for stock may be conditional (*Higgins et al.* v. *The Corporation of the Town of Whitby*, 20 U. C. Q. B. 296); and if the amount subscribed be paid either directly to the company or to contractors of the company at their request, the liability of the municipality is thereby extinguished. (*Woodruff et al.* v. *The Corporation of the Town of Peterborough*, 22 U. C. Q. B. 274.)

The head of the Municipal Corporation subscribing for and holding stock in the company to the amount of twenty thousand dollars or

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For guaranteeing the payment of debentures, &c.

2. For endorsing or guaranteeing the payment of any Debenture to be issued by the Company for the money by them borrowed, and for assessing and levying from time to time upon the whole ratable property of the Municipality a sufficient sum to discharge the debt or engagement so contracted; (*c*)

For issuing debentures.

3. For issuing, for the like purpose, Debentures payable at such time and for such sums respectively not less than twenty dollars, and bearing or not bearing interest, as the Municipal Council may think meet; (*d*)

Form of.

4. For directing the manner and form of signing or endorsing any Debenture so issued, endorsed or guaranteed, and of countersigning the same, and by what officer or person the same shall be so signed, endorsed or countersigned, respectively; (*e*) but no Municipal Corporation shall subscribe for stock or incur a debt or liability for the purposes aforesaid, unless the By-law, before the final passing thereof, shall receive the assent of the electors of the Municipality in manner provided by this Act. (*f*)

To be confirmed by Public vote.

Debentures, when valid without the corporate seal.

350. Any Debenture for any of the purposes in the preceding section mentioned, signed or endorsed and countersigned as directed by the By-law, shall be valid and binding on the Corporation without the corporate seal thereto, or the obser-

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upwards, is *ex officio* one of the directors of the company, in addition to the number of directors authorized by the special act, and has the same rights, powers and duties as any of the directors of the company. (Sec. 351.)

(*c*) A Municipal Council may, under this clause, *endorse* or *guarantee* a debenture issued by the railway companies intended, and may assess and levy a sufficient sum to discharge the *debt* or *engagement*. An endorsement under the clause would seem to be deemed "a debt," while a guarantee is termed an "engagement." (See Con. Stat. Can. cap. 66, sec. 75.)

(*d*) No Council is allowed, "unless specially authorized so to do, to give any bond, bill, note, debenture or other undertaking, for the payment of a less amount than one hundred dollars." (Sec. 216.) By this clause a special authority is given for the issue of debentures in aid of railway companies, in sums "not less than twenty dollars." (See Con. Stat. Can. cap. 66, sec. 75.)

(*e*) The powers are, to direct—

1. The *manner* and *form* of signing or endorsing any debenture so issued, endorsed or guaranteed, and of countersigning the same.
2. By what officer or person the same shall be so signed, endorsed or countersigned, respectively.

(*f*) See sec. 196, *et seq.*; see also sec. 77 of Con. Stat. Can. cap. 66.

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vance of any other form with regard to the Debenture than such as may be directed in the By-law. (*g*)

351. In case any Municipal Council subscribes for and holds stock in such Company to the amount of twenty thousand dollars or upwards, the head of the Council shall be *ex officio* one of the Directors of the Company, in addition to the number of Directors authorized by the special Act, and shall have the same rights, powers and duties as the other Directors of the Company. (*h*)

Head, when to be a Director.

352. The Council of every Township may pass By-laws for authorizing any Railway Company, in case such authority is necessary, (*i*) to make a Branch Railway on property of the Corporation, or on highways, (*j*) under such conditions as the Council sees fit, (*k*) and subject to the restrictions contained in the Consolidated Railway Act, and any other Acts affecting such railway. (*l*)

By-laws authorizing Branch Railways.

(*g*) As a rule, all debentures and other specialties duly authorized to be executed on behalf of a Municipal Corporation, must be not only for sums not less than one hundred dollars (see note *d* to sec. 349), but be sealed with the seal of the Corporation, and signed by the head thereof, or some other person authorized by by-law to sign the same, (Sec. 213.) But debentures issued under these sections in aid of railway companies are exceptions to both the general rules.

(*h*) But no such head of Council shall, directly or indirectly, vote on the election or appointment of any of the private directors of any railway company incorporated previous to or during the session held in the sixteenth year of Her Majesty's reign, unless the special act of incorporation of the company expressly provides therefor. (Con. Stat. Can. cap. 66, sec. 79.)

(*i*) The special act of incorporation may and, if properly drawn, ought to render the authority unnecessary.

(*j*) Every company to which the Con. Stat. Can. cap. 66, is applicable, has, under sec. 9, subsec. 8 of that act, power to make branch railways if required, provided the line of railway be not extended beyond the termini mentioned in the act incorporating the company (sec. 129), and to manage the same, and for that purpose to exercise all the powers, privileges and authorities necessary therefor, in as full and ample a manner as for the railway.

(*k*) The use of an ordinary travelled road by the locomotives and carriages of a railway company, must be more or less attended with danger to the ordinary public, and therefore full power is given to the Municipal Corporation, when granting permission, to make it subject to "such conditions as the Council sees fit."

(*l*) See Con. Stat. Can. cap. 66, secs. 136 to 150, both inclusive, and sec. 170.

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ARBITRATIONS.

Mode of appointing arbitrators and conducting arbitrations.

353. In all cases of arbitration directed by this Act, (*m*) the proceedings shall be as follows :

1. Each party shall appoint one arbitrator, and give notice thereof in writing to the other party; and when the other party is a Corporation, the notice shall be given to the head of the Corporation; (*n*)

Third arbitrator.

2. The two arbitrators appointed by or for the parties shall choose a third arbitrator; (*o*)

Provision in case of neglect to appoint.

3. In case of an arbitration between Townships or between Counties, or between a County and a City, or between a County and Town, if for one month after having received such notice, the party notified omits appointing an arbitrator; and if for ten days after the second arbitrator has been appointed, the two arbitrators omit to appoint a third arbitrator, then, in case the arbitration is between Townships, the Warden of the County within which the Townships are situate, or in case the arbitration is between Counties, or between a County and a City or a Town, the Governor-in-Council may appoint an arbitrator for the party or arbitrators in default; (*p*)

(*m*) The act by which parties may refer any dispute between them to the private decision of another party or parties is called a submission. The party or parties to whom the reference is made, arbitrator or arbitrators respectively. When the reference is made to more than one, and provision made that, in case they disagree, another shall decide, that other is called an umpire. The judgment given or determination made by an arbitrator or arbitrators or umpire is termed an award, or more correctly, that by an umpire, an umpirage. Corporations sole or aggregate, if not disabled, may submit disputes relating to corporate property to arbitration. (*In re Corporation of the Township of Eldon and Ferguson et al.* 6 U. C. L. J. 207.) But unless the arbitration be "directed by this act" and "the award made under this act" (see subsec. 14) the Court will not exercise summary jurisdiction over the award under the provisions of the Municipal Act. (*In re Corporation of the County of Brant and the Corporation of the County of Waterloo*, 19 U. C. Q. B. 450, 457.)

(*n*) The Head of every county and provisional corporation is the Warden thereof, and of every city and town the Mayor thereof, and of every township and incorporated village the Reeve thereof. (Sec. 65.)

(*o*) It is a common error to look upon a *third* arbitrator as an umpire. The difference between a third arbitrator and an umpire is that the former is appointed *before* the aribitration proceeds, and the latter after the arbitrators have entered upon the reference, and are unable to agree. There are other distinctions between the two, unnecessary to be mentioned here. (Harrison's C. L. P. Acts, p. 185.) The appointment of the third arbitrator is by this clause made a condition precedent to the right of the two arbitrators first appointed to act.

(*p*) It is the duty of each party to appoint *one* arbitrator, and give

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In case of exercise of powers as to roads, drains, &c.

4. In case of an arbitration between a Municipal Corporation and the owners of property to be entered upon, taken or used in the exercise of the powers of the Corporation in regard to roads, streets or other communications, or to drains and sewers, if, after the passing of the by-law, any person interested in the property appoints and gives due notice to the head of the Council of his appointment of any arbitrator to determine the compensation to which such person is entitled, the head of the Council shall, within three days, appoint a second arbitrator, and give notice thereof to the other party, and shall express clearly in the notice what powers the Council intends to exercise with respect to the property (describing it); (*q*)

If the owner of property fails to name an arbitrator

5. If within one month after service on the owner or owners of the property, of a copy of any By-law, certified to be a true copy under the hand of the Clerk of the Council, the owner or owners omit naming an arbitrator and giving notice thereof as aforesaid, the Council or the head, if authorized by by-law, may name an arbitrator on behalf of the Council, and give notice thereof to the owner or owners of the property, and the latter shall, within seven days thereafter, name an arbitrator on his or their behalf; (*r*)

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notice thereof in writing to the other party. It is the duty of the two arbitrators so appointed, in ten days after the appointment of the second arbitrator, to appoint a third arbitrator. Default may be made in either particular, and provision is here made therefor. If the arbitration is between townships, the Warden of the county in which the township is situate may appoint the second or third arbitrator, as the case may require; but if the arbitration is between counties, or between a county and a city or town, the appointment must be made by the Governor in Council.

(*q*) A difference is to be observed as to arbitrations between municipal councils and arbitrations between a municipal council and individuals. In the latter case the individual appoints his arbitrator, and gives due notice thereof to the Head of the Council. When he does so the Head of the Council is required, within *three* days, to appoint a second arbitrator, and besides to give notice thereof to the individual; in which notice must be clearly expressed "what powers the Council intend to exercise with respect to the property" (describing it.) It is then the duty of the two arbitrators, within *seven* days, to appoint a *third* abitrator. (Sub-sec. 6.) For *form* of mandamus on the head of a municipal council to appoint an arbitrator, see *The Queen* v. *The Council of Perth*, 14 U. C. Q. B. 156.

(*r*) The initiative is to be taken by the Council, who are required to cause to be served on the owner of the land to be affected a copy of the by-law affecting it, certified to be a true copy, under the hand of the Clerk of the Council. Then the initiative as to arbitration is to be taken by the owner so served. It is his duty within one month after service, to name an arbitrator, and give notice thereof to the

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Time for appointing third arbitrator and for award.

6. In either of the cases provided for by the two preceding sub-sections the two arbitrators shall within seven days appoint a third arbitrator, and their award shall be made within one month after the appointment; (*s*)

County Judge to appoint in certain cases.

7. If any such owner or occupier neglects naming an arbitrator within seven days after receiving notice to do so, or if the two arbitrators do not within seven days from the appointment of the lastly named of the two arbitrators, agree on a third arbitrator within seven days after the lastly named arbitrator's appointment, or if an arbitrator refuses or neglects to act, the Judge of the County Court, on the application of either party, shall nominate as an arbitrator a fit person resident without the limits of the Municipality in which the property in question is situate, and such arbitrator shall forthwith proceed to hear and determine the matters referred to him; (*t*)

Appointments, how to be made.

8. The appointment of all arbitrators shall be in writing, under the hands of the appointors, or in case of a Corporation, under the corporate seal and authenticated in like manner as a By-law; (*u*)

Council in the manner prescribed by the last clause. If he allow the month to expire without doing it, then the Council may take the initiative by appointing the first arbitrator, and giving notice of his appointment. If this is done the owner of the land is required, within *seven* days thereafter, to name the second arbitrator. The two so appointed of course name a third arbitrator before proceeding with the reference. (Sub-secs. 2 and 6.)

(*s*) The necessity for the appointment of the third arbitrator is explained in the notes to the two preceding clauses. The appointment by this clause is in each case to be made within *seven* days after the appointment of the last of the two arbitrators, and the award must be made within one month after such appointment of the third arbitrator.

(*t*) In this respect also a difference is to be observed between an arbitration between municipal councils and a municipal council and an individual. (See note *p* above.) It is the duty, as we have seen, of the individual, if he have not taken the initiative, within *seven* days after notice of the appointment of the first arbitrator by the Council, to appoint a second arbitrator. It is also the duty of the two so appointed, within *seven* days after the appointment of the last of them to name a third arbitrator. If in either respect there be default made, or if any arbitrator appointed refuse to act, which he may do, or neglect to act, the Judge of the County Court has the nomination of the requisite arbitrator.

(*u*) Every by-law must be under the seal of the Corporation, and be signed by the head, &c., and by the Clerk of the Corporation. (Sec. 192.) There should, it is apprehended, be a by-law or resolution of the Council authorizing the appointment, but the Municipal Council may so act as to estop it from taking objection to the want of such

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9. The arbitrators on behalf of a Municipal Corporation, or Provisional Corporation, shall be appointed by the Council thereof, or by the head thereof, if authorized by a By-law of the Council; (*v*)

Head may appoint for Corporation.

10. In case there are several persons having distinct interests in property in respect of which the Corporation is desirous of exercising the powers referred to in the above fourth sub-section under a By-law in that behalf passed, whether such persons are all interested in the same piece of property, or some or one in a part thereof and some or one in another part thereof, and in case the By-law or any subsequent By-law provides that the claims of all should in the opinion of the Council be disposed of by one award, such persons shall have one month instead of seven days to agree upon and give notice of an arbitrator jointly appointed in their behalf, before the County Court Judge shall have power to name an arbitrator for them; (*w*)

Where many parties are interested in the same property.

11. Every arbitrator before proceeding to try the matter of the arbitration, shall take and subscribe the following oath (or in the case of those who by-law affirm, make and subscribe the following affirmation) before any Justice of the Peace; (*x*)

Arbitrators to be sworn.

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a by-law or resolution. (See *Wilson* v. *The Municipal Council of Port Hope*, 10 U. C. Q. B. 405; *In re The Corporation of the Township of Eldon and Ferguson et al.*, 6 U. C. L. J. 207.)

(*v*) As a rule, arbitrators to represent a Municipal Council must be appointed by that council: the exception is when the Council, by by-law, deputes that power to the head of the council. The language of this section is such, that it might be inferred that under any circumstances the head could name an arbitrator on behalf of the council, and for this reason attention to this clause is particularly directed. (See sub-secs. 4 and 5 above.)

(*w*) Where several persons are interested (as in the opening of a new road, &c.), there may be an arbitration under this act as to each person interested, or, in the option of the council, an arbitration as to all, and the claims of all be determined by one award. In the latter case, instead of seven days only allowed by sub-sec. 7, one month is given.

(*x*) The oath is not only to be taken by *every* arbitrator, but to be taken by him "*before proceeding to try the matters of the arbitration.*" The oath, besides, is not only to be taken but subscribed. When taken and subscribed, it is to be filed with the papers of the reference. There is no express direction in this statute that the arbitrators shall give to the parties notice of their meetings and an opportunity of being heard; but this is essential, at least to this extent, that whether there has been a formal notice of meeting or not, it should appear that the parties at least had knowledge of the meetings and an opportunity of being heard and producing evidence before the arbitrators. (*In re Johnson and the Municipality of Gloucester*, 12 U. C. Q. B. 135.)

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Form of oath

"I, (A. B.) do swear, (*or* affirm) that I will well and truly "try the matters referred to me by the parties, and a true "and impartial award make in the premises according to the "evidence. So help me God;" Which oath or affirmation shall be filed with the papers of the reference;

Award, to be binding, in certain cases, must be adopted by by-law with. in a certain time.

12. In case the award relates to property to be entered upon, taken or used as mentioned in the said fourth sub-section, and in case the By-law did not authorize or profess to authorize any entry or use to be made of the property before an award has been made except for the purpose of survey, or in case the By-law did give or profess to give such authority, but the arbitrators find that such authority had not been acted upon, the award shall not be binding on the Corporation unless it is adopted by By-law within six weeks after the making of the award; and if the same is not so adopted, the original By-law shall be deemed to be repealed, and the property shall stand as if no such By-law had been made, and the Corporation shall pay the costs of the arbitration; (*y*)

Notes of the evidence adduced to be taken and filed in certain cases.

13. In the case of any award under this Act which does not require adoption by the Council, or in case of any award to which a Municipal Corporation is a party and which is to be made in pursuance of a submission containing an agreement that the present sub-section of this Act should apply thereto, the arbitrator or arbitrators shall take, and immediately after the making of the award, shall file with the Clerk of the Council for the inspection of all parties interested, full notes of the oral evidence given on the reference, and also all documentary evidence or a copy thereof, and in case they proceed partly on a view or any knowledge or skill possessed by themselves or by any of them, they shall also put in writing a statement thereof sufficiently full to allow the Court to form a judgment of the weight which should be attached thereto; (*z*)

(*y*) A Municipal Corporation has, by statute, certain powers in regard to roads, streets, and other communications, and to drains and sewers, which powers may be exercised by by-law. Any award made in reference thereto is dependent on the adoption of the award by by-law within six weeks after its making; and the original by-law is also made dependent on the passing of such second by-law. The award is not to be binding on the Corporation unless, within the time limited for the purpose, it is adopted by the Council. If not so adopted, the original by-law is to be deemed repealed. In this event the Corporation is to pay the costs of the arbitration.

(*z*) Awards other than those described in the last note do not require adoption by the Council to render them valid. When an award not requiring such adoption, or an award to which this clause is by

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14. Every award made under this Act (*a*) shall be in writing under the hands of all or two of the arbitrators, and shall be subject to the jurisdiction of any of the Superior Courts of Law or Equity as if made on a submission by a Bond containing an agreement for making the submission a rule or order of such Court; (*b*) And in the cases provided for by the last

Award to be made by at least two arbitrators, and subject to Superior Courts.

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the submission applicable, is made, the arbitrator or arbitrators are required to do what this clause directs, viz.:

1. Take full notes of the oral evidence given on the reference.
2. File the same (immediately after the making of the award) with the Clerk of the Council, for the inspection of all parties interested.
3. File in like manner all documentary evidence, or a copy thereof.
4. In case they proceed partly on a view or any knowledge or skill possessed by themselves or by any of them, put in writing a statement thereof sufficiently full to allow the Court to form a judgment of the weight which should be attached thereto.

But it does not follow that the award will be set aside for non-compliance with the provisions of this sub-section. (*In re the Corporation of the United Counties of Northumberland and Durham and the Corporation of the Town of Cobourg*, 20 U. C. Q. B. 283.)

The section is silent as to costs, and so the arbitrators have no power to make, in their award, any direction as to costs. (*Ib.*)

(*a*) See note *m* to this section.

(*b*) Formerly there were two kinds of submission that might be made rules of court: 1st. Reference by rule of court, Judge's order, and order of Nisi Prius; 2nd. Submissions in writing, by virtue of the statute 9 & 10 Wm. III., where they contain an agreement to the effect that they may be made rules of court. (Watson on Awards, 3 Edn. 45.) These were extended by the Common Law Procedure Act, 1856, which enacted that "Every agreement or submission, whether by deed or instrument, not under seal, may be made a rule of one of the superior courts of law or equity in Upper Canada, on the application of any party thereto, unless such agreement or submission contain words purporting that the parties intend that it should *not* be made a rule of court," &c. (Sec. 97.) This provision is now in substance re-enacted in sec. 176 of Con. Stat. U. C. cap. 22. The effect of the clause here annotated is to place submissions under this action on the same footing as any of the foregoing described submissions. The effect of making any award under this act subject to the jurisdiction of any of the superior courts of law or equity, as if made on a submission by a bond containing an agreement for making the submission a rule or order of such Court, appears to be to bring all such submissions under the statute of 9 & 10 Wm. III., and to give the courts power to review the awards, and if necessary enforce the performance of them. (See notes to Harrison's C. L. P. Acts, p. 174.) The ordinary remedy by action is of course open to any party to an award under this section. (See *Harpel* v. *The Municipality of the Township of Portland*, 17 U. C. Q. B. 455.) In such an action it is no objection to the declaration that it was upon a submission to three arbitrators, while two only executed the award, for the statute authorizes two to

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preceding sub-section, the Court shall consider not only the legality of the award but the merits as they appear from the proceedings so filed as aforesaid, and may call for additional evidence to be taken in any manner the Court directs, and may, either without taking such evidence or after taking such evidence, set aside the award, or remit the matters referred, or any of them, from time to time, to the consideration and determination of the same arbitrators, or to any other person or persons whom the Court may appoint as prescribed in the "Common Law Procedure Act," and fix the time within which such further or new award shall be made, or the Court may itself increase or diminish the amount awarded or otherwise modify the award, (*c*) as the justice of the case may seem to the Court to require.

POUNDS AND POUND-KEEPERS.

By-laws as to pounds and cruelty to animals.

354. The Council of every Township, Town, City and incorporated Village, may respectively pass By-laws (*d*) (not inconsistent with the Consolidated Statute of Canada relating to cruelty to animals): (*e*)

Providing Pounds.

Pounds to be provided.

1. For providing sufficient yards and enclosures for the safe-keeping of such animals as it may be the duty of the Pound-keeper to impound; (*f*)

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act, and makes their award valid. (*Ib.*) Under a plea of no award it has been held that defendants cannot dispute the arbitrators' authority to award a portion of the sum awarded. (*Hodgson* v. *The Municipality of the Township of Whitby*, 17 U. C. Q. B. 280.)

(*c*) This is a most important provision. It enables the courts, in cases where it is applicable, to do complete justice between the parties. The power to increase or diminish the amount awarded, is one necessary to this end; and the power being not only to increase or diminish the amount awarded, but "*otherwise* to *modify* it," is, it is believed, extensive enough to enable the court to impose conditions or do whatever justice demands.

(*d*) Counties are not included, and yet County Councils are authorized to appoint pound-keepers. (Sec. 246, subsec. 2.)

(*e*) Con. Stat. Can. cap. 96.

(*f*) The pound is the custody of the law. The pound-keeper is bound to take and keep whatever is brought to him, at the peril of the persons who bring it. If wrongfully taken, *they* (not he) are answerable. It would never do if the pound-keeper were liable for refusing to take cattle in, and were also liable in another action for not letting them go. When once the cattle are impounded, he cannot let them go without a replevin brought against the distrainor, or without the consent of the party. The replevin lies against him who takes, or him

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ANIMALS RUNNING AT LARGE.

2. For restraining or regulating the running at large of any animals, and providing for impounding them, and for causing them to be sold in case they are not claimed within a reasonable time, or in case the damages, fines and expenses are not paid according to law; (*g*) Animals running at large.

3. For appraising the damages to be paid by the owners of animals impounded for trespassing contrary to the laws of Upper Canada or of the Municipality; (*h*) Appraising damages done by.

4. For determining the compensation to be allowed for services rendered in carrying out the provisions of this Act with respect to animals impounded or distrained, and detained in the possession of the distrainor. (*i*) Compensation for impounding animals.

GENERAL PROVISIONS.

355. Until varied or other provisions are made by Act of Parliament, or by By-law of the Municipality, (*j*) the following regulations shall be in force: Regulations respecting animals.

1. The owner or occupant of any land shall be responsible for any damage or damages caused by any animal or animals Liability for damage done

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who commands the taking: the bailiff who seizes and the party who directs the seizure may both be sued. But the situation of a pound-keeper is not that of a bailiff or servant. He is a public officer, discharging a public duty, and this as much in the keeping as in the receiving. (*Wardell* v. *Chisholm*, 9 U. C. C. P. 125; see further, *Clarke* v. *Durham*, E. T. 3 Vic., R. & H. Dig., Trespass, II. 16; *Carey* v. *Tate*, 6 O. S. 147.) Being a public officer discharging a public duty, he is entitled to notice of action under Con. Stat. U. C. cap. 126. (*Davis* v. *Williams*, 13 U. C. C. P. 365.) In the declaration it must be averred that he acted maliciously and without reasonable or probable cause. (*Ib.*)

(*g*) The powers are—

1. For *restraining* or *regulating* the running at large of *any* animals.
2. For impounding them.
3. For causing them to be sold in case they are not claimed within a reasonable time, or in case the damages, fines and expenses are not paid according to law.

A by-law enacting that certain animals specified shall not run at large, does not impliedly allow others not named to do so, contrary to the common law. (*Jack* v. *The Ontario, Simcoe and Huron Railroad Union Company*, 14 U. C. Q. B. 328.)

(*h*) Regulations are made by the statute, which remain in force until otherwise provided by by-laws of the Municipal Corporations (Sec. 355).

(*i*) The compensation may be for services rendered with respect to animals { impounded, distrained, or detained in the possession of the distrainor.

(*j*) See note *h* to sec. 354.

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under his charge and keeping, as though such animal or animals were his own property, and the owner of any animal not permitted to run at large by the regulations of the Municipality, shall be liable for any damage done by such animal, although the fence enclosing the premises was not of the height required by such regulations; (*k*)

What animals to be impounded.

2. If not previously replevied, the Pound-keeper shall impound any horse, bull, ox, cow, sheep, goat, pig or other cattle,

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(*k*) An action of trespass will lie by the owner of a farm into which a neighbour's pigs may break, enter, and do damage, against the owner of the pigs, unless he can excuse the act for defect of fences or upon some other ground that ought to be specially pleaded. (*Blacklock* v. *Millikan*, 3 U. C. C. P. 34.) So trespass is maintainable against the owner of a bull which broke into the plaintiff's farm and there killed his mare, though the owner of the bull was not present at the time or aware of the fact. (*Mason* v. *Morgan* 24 U. C. Q. B. 328.) If a horse through the neglect of the owner in not keeping his fences properly repaired, stray out of the field in which it is feeding, into the field of an adjoining proprietor, and there get among his horses and kicks one in such a way as to cause its death, such owner is liable in trespass for the injury which his horse has done. (*Lee* v. *Riley*, 12 L. T. N. S. 388.) Whether at common law the owner of a dog is answerable in trespass for every unauthorized entry of the animal into the land of another, as in the case of pigs, an ox or a horse, is doubtful. (*Read* v. *Edwards*, 17 C. B. N. S. 245.) An action on the case lies against one who keeps a mischievous animal of any kind in respect of any damage done by such animal, where it can be shown that the owner knew of the mischievous propensity of the animal. (*Thomas* v. *Morgan*, 2 C. M. & R. 496; *Card* v. *Case*, 5 C. B. 622; *May* v. *Burdett*, 9 Q. B. 101.) If the owner upon being told of the mischief done, offers to settle, this is some evidence of his knowledge that the animal was mischievous. (*Thomas* v. *Morgan*, 2 C. M. & R. 496; *Mason* v. *Morgan*, 24 U. C. Q. B. 328.) The owner of any dog that kills, wounds or otherwise injures any sheep or lamb, is now liable for the value of such sheep or lamb without proof that the owner of the dog knew of its mischievous propensity (Stat. 29 & 30 Vic. cap. 55, sec. 7) and the liability may be enforced against the owner of the dog by summary proceedings before any two magistrates of the county. (*Ib.* sec. 8.) If the owner of the dog cannot upon diligent search be discovered, the municipality may be held answerable to make good the loss. (*Ib.* sec. 9.) The owner of a dog, to whom notice has been given of an injury done by his dog to any sheep or lamb, is bound within 48 hours after such notice, to have the dog killed. (*Ib.* sec. 12.) So any person may kill any dog which he may see worrying or wounding any sheep or lamb. (*Ib.* sec. 11.) If the owner of geese or other poultry refuse or neglect, after notice in writing of their trespass, to prevent them trespassing on his neighbours premises, he may be prosecuted before any Justice of the Peace. (Sub-sec. 2, *post.*) For the protection of plank-roads from the ravages of swine running at large, joint stock companies are authorized to impound all swine running at large on plank-roads owned by them. (29 Vic. cap. 36, sec. 8.)

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geese or any other poultry, distrained for unlawfully running at large, or for trespassing and doing damage, delivered to him for that purpose by any person resident within his division who has distrained the same; (*l*) or if the owner of any geese or other poultry refuses or neglects to prevent the same from trespassing on his neighbours' premises after a notice in writing has been served upon him of their trespass, then the owner of such poultry may be brought before any Justice of the Peace, and fined such sum as the Justice may direct; (*m*)

When the common Pound is not safe.

3. When the common Pound of the Municipality or place wherein a distress has been made is not secure, the Pound-keeper may confine the animal in any inclosed place within the limits of the Pound-keeper's division within which the distress was made; (*n*)

(*l*) It has been held that a master is liable for the acts of his farm servant in impounding cattle in his absence, the servant acting within the scope of his authority. (*Spafford* v. *Hubble*, M. S. Easter Term, 7 Wm. IV.; R. & H. Dig., p. 294.) In trespass against two defendants for seizing and taking cattle, one defendant justified as pound-keeper; and because the cattle were in the close of A., wrongfully trespassing in said close, and eating grass and corn therein, A. took the said cattle and delivered them to the defendant as a pound-keeper within his jurisdiction, and the defendant impounded and afterwards sold them according to law; and the other defendant justified the seizure and the sale by the pound-keeper, as in the other plea, and that the defendant bought the cattle as the highest bidder; to both of which pleas there was a general demurrer. Held, that the plea by the pound-keeper was bad, as it did not show that he received the cattle from a person *within his division*, or that the close *was so situate*, and that the plea of the purchaser was good, as he could not be held liable to the plaintiff in trespass. (*Clarke* v. *Durham et al.*, M. S. Easter Term, 3 Vic., R. & H. Dig., p. 431.) In a plea of jurisdiction by a pound-keeper for taking a pig, when the justification was that the pig, contrary to township regulations, broke through a lawful fence, it was held necessary to allege that the fence was within that township, and to show the close in which the pig was trespassing at the time. (*Carey* v. *Tate*, 6 U. C. O. S. 147.) Pound-keepers on the line of roads owned by joint stock companies, are bound to receive swine found running at large on the roads, and entitled to receive the usual fees, and in default of payment to sell the animals in the usual way, although they may be free commoners under the by-laws of the Municipality. (29 Vic. cap. 36, sec. 8.)

(*m*) See note *k* to this section.

(*n*) It would seem that the animal must be impounded with the pound-keeper of the division within which it is distrained, and the Municipal Council may provide sufficient yards and enclosures for the purpose. (Sec. 354, subsec. 1.) If not sufficient, this clause enables the pound-keeper "to confine the animal in any enclosed place within the limits of the pound-keeper's division, &c."

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Statement of demand to be made to Pound-keeper by impounder.

4. The owner of any animal impounded shall at any time be entitled to his animal, on demand made therefor, without payment of any poundage fees, on giving satisfactory security to the Pound-keeper for all costs, damages and poundage fees that may be established against him, (*o*) but the person distraining and impounding the animal shall, at the time of such impounding, deposit poundage fees, if such be demanded, and within twenty-four hours thereafter, deliver to the Pound-keeper duplicate statements in writing of his demands against the owner for damages, if any, not exceeding twenty dollars, done by such animal, exclusive of such poundage fees; and shall also give his written agreement (with a surety if required by the Pound-keeper) in the form following, or in words to to the same effect:

Form of agreement with Pound-keeper.

"I (*or* we, *as the case may be*) do hereby agree that I (*or* we) will pay to the owner of the (*describing the animal*) by me A. B. this day impounded, all costs to which the said owner may be put in case the distress by me the said A. B. proves to be illegal, or in case the claim for damages now put in by me the said A. B. fails to be established;" (*p*)

If the animal be of a certain kind.

5. In case the animal distrained is a horse, bull, ox, cow, sheep, goat, pig or other cattle, (*q*) and if the same is distrained by a resident of the Township for straying within his premises, such person, instead of delivering the animal to a Pound-keeper, may retain the animal in his own possession, provided he makes no claim for damages done by the animal, and duly gives the notices hereinafter in that case required of him; (*r*)

If the owner be known.

6. If the owner is known to him, he shall forthwith give to the owner notice in writing of having taken up the animal; (*s*)

(*o*) This part of the sub-section is new. It enables the owner of the animal impounded without delay to secure a return of the animal. This he may obtain upon giving satisfactory security to the pound-keeper "for all costs, damages and poundage fees that may be established against him."

(*p*) If the distress be illegal, the distrainor, and not the pound-keeper, is the party liable. (See note *f* to sec. 354.)

(*q*) See note *k* to this section.

(*r*) The privilege to the distrainor to impound the animal on his own premises, or elsewhere than in the public pound, can only be exercised where he makes no claim for damage done by the animal, and gives the notices made necessary in that behalf.

(*s*) As to the meaning of the word "forthwith," see note *l* to sec. 125.

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7. If the owner be unknown to the person taking up and retaining possession of the animal, such person shall, within forty-eight hours, deliver to the Municipal Clerk a notice in writing of having taken up the animal, and containing a description of the colour, age and natural and artificial marks of the animal, as near as may be; (*t*) If unknown, notice to Township Clerk.

8. The Municipal Clerk, on receiving this notice, shall forthwith enter a copy thereof in a book to be kept by him for that purpose, and shall post the notice he receives, or copy thereof, in some conspicuous place on or near the door of his office, and continue the same so posted for at least one week, unless the animal is sooner claimed by the owner; (*u*) Duty of Clerk thereon.

9. If the animal or any number of animals taken up at the same time be of the value of ten dollars or more, the distrainor shall cause a copy of the notice to be published in a newspaper in the County, if one is published therein, and if not, then in a newspaper published in an adjoining County, and to be continued therein once a week for three successive weeks; (*v*) If the animals are worth $10 or over.

10. In case an animal be impounded, notices for the sale thereof shall be given by the Pound-keeper or person who impounded the animal within forty-eight hours afterwards, but no pig or poultry shall be sold till after four clear days, nor any horse or other cattle till after eight clear days from the time of impounding the same; (*w*) Notice of sale. When sale may be made

11. In case the animal be not impounded, but is retained in the possession of the party distraining the same, if the animal is a pig, goat or sheep, the notices for the sale thereof shall If animal is not impounded, but detained

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(*t*) Where the owner is known, notice is forthwith to be given to him. When not known, the notice must be within forty-eight hours delivered by him to the Township Clerk. The notice must contain "a description of the colour, age and natural and artificial marks" of the animal.

(*u*) The duty of the Clerk, when he receives the notice, is here defined. It is,

1. To enter a copy thereof in a book, to be kept by him for that purpose.
2. To post the notice, or a copy of it, in some conspicuous place, &c.
3. To continue the same so posted for at least one week, &c.

(*v*) This is to be done by the distranor not by the Clerk.

(*w*) The notice of sale is to be given within a time limited, but the sale is not to take place sooner than a specified period. No matter of what description the animal impounded is, notice of sale is to be given within forty-eight hours after the impounding; but no pigs or poultry are to be sold in less than four clear days, and no horse or other cattle in less than eight clear days.

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not be given for one month, and if the animal is a horse or other cattle, the notices shall not be given for two months after the animal is taken up; (*x*)

Notice of sale unless redeemed.

12. The notices of sale may be written or printed, and shall be affixed and continued for three clear successive days, in three public places in the Municipality, and shall specify the time and place at which the animal will be publicly sold, if not sooner replevied or redeemed by the owner or some one on his behalf paying the penalty imposed by law (if any), the amount of the injury (if any) claimed or decided to have been committed by the animal to the property of the person who distrained it, together with the lawful fees and charges of the Pound-keeper, and also of the Fence-viewers (if any), and the expenses of the animal's keeping; (*y*)

Keeper to feed impounded cattle.

13. Every Pound-keeper, and every person who impounds or confines, or causes to be impounded or confined, any animal in any common Pound or in any open or close Pound, or in any inclosed place, shall daily furnish the animal with good and sufficient food, water and shelter, during the whole time that such animal continues impounded or confined; (*z*)

And may recover the value.

14. Every such person who furnishes the animal with food, water and shelter, may recover the value thereof from the owner of the animal, and also a reasonable allowance for his time, trouble and attendance in the premises; (*a*)

(*x*) Whenever horses, bulls, oxen, cows, sheep, goats or other cattle are distrained by a resident of a township for straying in his premises, instead of delivering the animals to a pound-keeper, such person may retain them in his own possession. (Sub-sec. 5.) If he do so, the times appointed for sale are to be extended to the periods mentioned in the sub-section here annotated.

(*y*) Before being allowed to redeem, the owner may be required to pay,

1. The penalty imposed by law, if any.
2. The amount of the injury, if any.
3. The lawful fees and charges of the pound-keeper.
4. Also of the fence-viewers, if any.
5. The expenses of the animal's keeping.

(*z*) The duty to feed the animal impounded is cast upon the custodian, whether pound-keeper or other person, who impounds or confines, or causes to be impounded or confined, the animal; and the performance of that duty may be enforced by a penalty. (Sub-sec. 22.)

(*a*) *Every such person, i. e.*, every pound-keeper, and every person who impounds or confines, or causes to be impounded or confined, any animal. The right, it will be observed, is not only to recover the value of the "food, water and shelter," but a reasonable allowance for "trouble and attendance."

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In what manner such value may be recovered.

15. The value or allowance as aforesaid may be recovered, with costs, by summary proceeding before any Justice of the Peace within whose jurisdiction the animal was impounded, in like manner as fines, penalties or forfeitures for the breach of any By-law of the Municipality may by law be recovered and enforced by a single Justice of the Peace; and the Justice shall ascertain and determine the amount of such value and allowance when not otherwise fixed by law, adhering, so far as applicable, to the tariff of Pound-keepers' fees and charges that may be established by the By-laws of the Municipality; (*b*)

Other mode of enforcing.

16. The Pound-keeper or person so entitled to proceed may, instead of such summary proceeding, enforce the remuneration to which he is entitled in manner hereinafter mentioned; (*c*)

Sale, how effected, &c., and purchase money, how applied.

17. In case it be by affidavit proved before one of the Justices aforesaid, to his satisfaction, that all the proper notices had been duly affixed and published in the manne and for the respective times above prescribed, then if the owner, or some one for him, does not within the time specified in the notices, or before the sale of the animal, replevy or redeem the same in manner aforesaid, the Pound-keeper who impounded the animal, or if the person who took up the animal did not deliver such animal to any Pound-keeper, but retained the same in his own possession, then, any Pound-keeper of the Township may publicly sell the animal to the highest bidder, at the time and place mentioned in the aforesaid notices, and after deducting the penalty and the damages (if any) and fees and charges, shall apply the produce in discharge of the value of the food and nourishment, loss of time, trouble, and attendance so supplied as aforesaid, and of the expenses of driving or conveying and impounding or confining the animal, and of the sale and attending the same, or incidental thereto, and of the damage when legally claimable not exceeding twenty dollars, to be ascertained as aforesaid, done by the animal to the property of the person at whose suit the same was distrained, and shall return the surplus (if any) to the original owner of the animal, or if not claimed by him within three months after the sale, the Pound-keeper shall pay such surplus to the Treasurer or Chamberlain of and for the use of the Municipality; (*d*)

(*b*) It is made the duty of the Justice to *ascertain* and *determine* the amount of such value and allowance, when not otherwise fixed by law.

(*c*) The option is given to the pound-keeper, &c., to proceed either under the preceding clause or in the manner hereinafter directed.

(*d*) See note *l* to this section.

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Disputes regarding such demand how determined

18. If the owner within forty-eight hours after the delivery of such statements, as provided in the fourth sub-section of this section, disputes the amount of the damages so claimed, the amount shall be decided by the majority of three Fence-viewers of the Municipality, one to be named by the owner of the animal, one by the person distraining or claiming damages, and the third by the Pound-keeper; (*e*)

Fence-viewers to view and appraise damage.

19. Such Fence-viewers, or any two of them, shall, within twenty-four hours after notice of their appointment as aforesaid, view the fence and the ground upon which the animal was found doing damage, and determine whether or not the fence was a lawful one according to the Statutes or By-laws in that behalf at the time of the trespass; and if it was a lawful fence, then they shall appraise the damages committed, and, within twenty-four hours after having made the view, shall deliver to the Pound-keeper a written statement signed by at least two of them, of their appraisement, and of their lawful fees and charges; (*f*)

Penalty for neglect of duty by viewers.

20. Any Fence-viewer neglecting his duty as arbitrator as aforesaid, shall incur a penalty of two dollars, to be recovered for the use of the Municipality, by summary proceeding before a Justice of the Peace, upon the complaint of the party aggrieved, or the Treasurer or Chamberlain of the Municipality; (*g*)

(*e*) If the owner do not dispute the claim for damages, there will be no occasion to call in fence-viewers, as here provided; but if he do dispute the claim, he is entitled to appoint one fence-viewer, the person who distrained another, and the pound-keeper the third. The decision of the majority is made binding on the parties.

(*f*) The duties of fence-viewers, under this clause, may be enumerated thus:

1. To view the fence, &c., within twenty-four hours after notice of appointment.
2. To determine whether or not the fence was a lawful one, &c.
3. To appraise the damages committed, if fence lawful.
4. To deliver to the pound-keeper, within twenty-four hours after view, a written statement of appraisement, &c.

The intention is plain—that the fence-viewers shall determine the question of the legality of the fences, as well as the damages done by the animal impounded for trespassing. The rights of the parties must depend on the determination of the fence-viewers, or a majority of them. It is not open to either of the parties in an action to bring again in question the *sufficiency* of the fences. The decision of the fence-viewers is conclusive. (*Short* v. *Palmer et al.*, 24 U. C. Q. B. 633, 2 L. C. G. 40; see also *In re Cameron and Kerr*, 25 U. C. Q. B. 538, 2 L. C. G. 181.)

(*g*) Apparently no fence-viewer so chosen has a right to decline

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Proceedings where viewers decide against the legality of a fence.

21. If the Fence-viewers decide that the fence was not a lawful one, they shall certify the same in writing under their hands, together with a statement of their lawful fees, to the Pound-keeper, who shall, upon payment of all lawful fees and charges, deliver such animal to the owner if claimed before the sale thereof; but if not claimed, or if such fees and charges be not paid, the Pound-keeper, after due notice, as required by this Act, shall sell the animal in the manner before mentioned, at the time and place appointed in the notices; (*h*)

Liability of Pound-keeper refusing to feed animals impounded.

22. In case any Pound-keeper or person who impounds or confines or causes to be impounded or confined, any animal as aforesaid, refuses or neglects to find, provide, and supply the animal with good and sufficient food, water, and shelter as aforesaid, he shall, for every day during which he refuses or neglects, forfeit a sum of not less than one dollar nor more than four dollars; (*i*)

Recovery and enforcement of penalties.

23. Every fine and penalty imposed by this Act may be recovered and enforced, with costs, by summary conviction, under the Summary Convictions Act, before any Justice of the Peace for the County or of the Municipality in which the offence was committed; and in default of payment the offender may be committed to the Common Gaol, House of Correction, or Lock-up House of such County or Municipality, there to be imprisoned for any time, in the discretion of the convicting and committing Justice, not exceeding fourteen days, unless such fine and penalty and costs, including the costs of committal, be sooner paid; (*j*)

Imprisonment in default of payment.

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acting, but on the contrary it is his duty to act. A neglect of duty is to be visited with the penalty inflicted by the clause under consideration.

(*h*) The decision of the fence-viewers is final (see note *f* to this section); but although the fence-viewers decide that the fence is not a lawful fence, if the owner neglects, within the time limited, to claim the animal, or if the fees are not paid, the animal may still be sold.

(*i*) See note *z* to this section.

(*j*) The language of this sub-section deserves attention. It provides that "*every* fine and penalty imposed *by this act*" may be recovered in the manner directed. It is possible that the words "this act" have been inadvertently introduced into this sub-section, and that the Legislature in this sub-section only contemplate the enactments relative to pounds and pound-keepers; otherwise there is an apparent inconsistency between this sub-section and the sixth, seventh and eighth sub-sections of section 246, as to the length of imprisonment. In the latter the period of imprisonment is twenty-one days; in the sub-section here annotated, it is fourteen days. (Per Draper, C. J., in *Fennell and the Corporation of the Town of Guelph*, 24 U. C. Q. B. 244.)

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Who may be a witness.

24. Upon the hearing of any information or complaint exhibited or made under this Act, any person (including the person giving or making the information or complaint) shall be a competent witness, notwithstanding such person may be entitled to any part of the pecuniary penalty on the conviction of the offender; (*k*)

Application of penalties.

25. When not otherwise provided, every pecuniary penalty recovered before any Justice of the Peace under this Act shall be paid and distributed in the following manner; one moiety to the city, town, village or township, in which the offence was committed, and the other moiety thereof, with full costs, to the person who informed and prosecuted for the same, or to such other person as to the Justice may seem proper; (*l*)

Reward for taking persons guilty of horse-stealing.

26. The Council of every county municipality in Upper Canada shall provide by By-law, that a sum not less than twenty dollars shall be payable as a reward to any person or persons who shall pursue and apprehend, or cause to be apprehended, any person or persons guilty of stealing any horse or mare within the said county, and such reward shall be paid out of the funds of the municipality on conviction of the thief, and on the order of the judge before whom the conviction is obtained; (*m*)

Not to disqualify witness.

27 The said reward shall not disqualify the person claiming the same or entitled thereto, from being a witness; (*n*)

(*k*) This is to remove any doubt that may be found to exist upon the meaning of the words "party to any suit or proceeding individually named in the record," as used in the Evidence Act, Con. Stat. U. C. cap. 32, sec. 5.

(*l*) As to the meaning of the words "every pecuniary penalty recovered before any Justice of the Peace *under this act*," see note *j*, ante.

(*m*) This sub-section is new, and one that the reader would scarcely expect to find under the heading, "Pounds and Pound-keepers." The object of the sub-section is to discourage and prevent the stealing of horses, and this is to be done by the enactment of a by-law for the payment of a reward, to be paid to any person or persons who shall pursue and apprehend, or cause the thief to be apprehended. The maximum amount of the reward is not limited, the words being "not *less* than twenty dollars." So that there appears to be nothing to prevent the Municipal Council fixing the amount at a much larger sum than that mentioned.

(*n*) The meaning of this sub-section is obscure. The reward is not to disqualify the person claiming the same or entitled thereto *from being a witness*. What is probably meant is, that the right to the reward is

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28. If any tree should be thrown down, by accident or otherwise, across a line or division fence, or in any way in and upon the property adjoining that upon which such tree stood, thereby causing damage to the crop upon such property or to such fence, it shall be the duty of the proprietor or occupant of the premises on which such tree theretofore stood, to remove the same forthwith, and also forthwith to repair the fence, and otherwise to make good any damage caused by the falling of such tree; and on his neglect or refusal so to do for forty-eight hours after notice in writing to remove the same, the injured party may remove the same, or cause the same to be removed, in the most convenient and inexpensive manner, and may make good the fence so damaged, and may retain such tree to remunerate him for such removal, and may also recover any further amount of damages beyond the value of such tree from the party liable to pay it under this Act; provided always, that for the purpose of such removal the owner of such tree may enter into and upon such adjoining premises for the removal of the same without being a trespasser, avoiding any unnecessary spoil or waste in so doing, and all disputes arising between parties relative to this sub-section and for the collection and recovery of all or any sums of money becoming due thereunder, shall be adjusted by three fence-viewers of the municipality, two of whom shall agree. (*o*)

Provision when a tree is thrown down across a line fence.

Proviso: entry to remove tree not to be a trespass, &c.

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not to disqualify the claimant of it from being a witness *against the alleged thief*. It can scarcely be intended to make him a good witness on his own behalf against the Corporation, in an action for the recovery of the reward.

(*o*) This sub-section is also apparently out of its place under the heading, "Pounds and Pound-keepers." It is a new provision, designed to supply a remedy, where none before was supposed to exist, for an admitted wrong. While ample provision is so far made for the redress of injuries arising from the trespasses of animals, none is made till now for the redress of the *quasi* trespasses of falling trees across line or division fences or in any way in and upon the property adjoining that upon which the tree stood, thereby causing damage to crop or fence. In such case it is in the first instance made the duty of the owner or occupant of the land upon which the tree stood, forthwith to remove the tree, repair the fence, and make good any damage caused by the falling of the tree. If he neglect this duty for forty-eight hours, the injured party may,

1. Remove the tree, or cause the same to be removed.
2. Make good the fence.
3. Retain the tree to remunerate him for removal.
4. Recover any further amount of damages beyond the value of such tree.

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ADMINISTRATION OF JUSTICE AND MATTERS OF POLICE.

Cities to be Counties, &c.

In what respect Cities to be Counties.

356. Every city and town separated, shall be a county of itself for municipal purposes, and for such judicial purposes as are herein specially provided for in the case of all cities, but for no other. (*p*)

(*p*) Towns separated under sec. 26, would in some measure partake of the character of cities. Towns not separated under sec. 26 and incorporated villages, though separate municipalities like townships, form territorially portions of the counties in which situate, as well as for some municipal purposes, so far as the jurisdiction of the County Councils extend; and also for judicial purposes.

It is here expressly declared that every city and town separated, shall be a county of itself:

1. For municipal purposes.

2. *And* for such judicial purposes as are herein specially provided for in the case of all cities, but for no other.

What is meant by "Municipal purposes?" This expression cannot mean that the city or town separated is to be a county for the same municipal purposes, that a county consisting of several townships is created, or with the same municipal institutions and powers, because in these respects the institutions and powers of a city or town separated, though a county for municipal purposes, differ very widely from those of counties. It may be properly construed thus: that for the discharge of every duty and for the exercise of every power, right or function of a municipal character, the cities and towns separated do not form parts of the counties in which situate. Unless making a city or town a county of itself for municipal purposes, be a segregation of the city or town from all other local divisions, as to the exercise of all judicial functions, general or individual, it is difficult to see what the Legislature here intended (per Draper, C.J., in *The Queen ex rel. Fleming* v. *Smith*, 7 U. C. L. J. 47; see also *The Queen ex rel. Blasdell* v. *Rochester*, *Ib.* 101, 102.)

What is meant by "Judicial purposes?" It means simply the administration of justice. Cities and towns separated, are not counties for all judicial purposes, but only for such as are herein specially provided. (Secs. 357 to 386.) The inhabitants of a city are exempt from serving on juries at any other than the city courts and courts of assize and *nisi prius*, oyer and terminer and general gaol delivery for the county in which the city is situate and on trials at Bar before the Superior Courts of Law. (Sec. 388.) But the general and adjourned Quarter Sessions of the Peace for the county may be held and the jurisdiction thereof exercised in the city. (Sec. 360.) So any justice of the Peace for the county may issue any warrant to try or investigate any case in a city, when the offence has been committed in the county or union of counties, in which the city lies, or which the city adjoins. (*Ib.*)

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JUSTICES OF THE PEACE.

357. The head of every Council, the Police Magistrate of every City and Town, and Reeve of every Town, Township and Incorporated Village, shall, *ex officio*, be Justices of the Peace for the whole County or Union of Counties in which their respective Municipalities lie; and Aldermen in Cities shall be Justices of the Peace in and for such Cities.(*q*)

Heads of Councils, Mayors and Reeves to be Justices of the Peace.

358. Justices of the Peace for any Town, (*r*) shall have the same property qualification and take the same oaths as other Justices of the Peace; (*s*) but no Warden, Mayor, Recorder, Police Magistrate, Alderman, or Reeve, after taking the oaths or making the declarations as such, shall be required to have any property qualification or to take any further oath to enable him to act as a Justice of the Peace.(*t*)

Qualification and oaths of such persons as Justices of the Peace, when dispensed with.

359. When a Town has been erected into a City,(*u*) and the Council of the City duly organized,(*v*) every Commission of the Peace theretofore issued for the Town shall cease.

When Towns become Cities, former Commissions of Peace to cease.

(*q*) This section illustrates the remarks made in the last note. It confers jurisdiction upon the Police Magistrate of every city and town, and upon the Reeve of every town, township, and incorporated village, co-equal to the whole county in which the city or town is situate; but Aldermen of cities, though *ex officio* Justices of the Peace, are restricted in jurisdiction to the cities. So Justices of the Peace of a county are excluded from jurisdiction as to offences committed in a city. (Sec. 360.)

(*r*) The Crown may appoint Justices of the Peace for a town (sec. 361); and it does not appear that Justices so appointed would have any jurisdiction beyond the limits of the town. (*Ib.*)

(*s*) A Justice of the Peace, not being *ex officio* such, is required to have in his actual possession, to and for his own use and benefit, real estate, either in free and common sockage, &c., for life, or lease for one or more lives, or originally created for a term not less than twenty-years, or by usufructory possession for his life in lands, &c., in the Province, of or above the value of $1,200, over and above incumbrances, and over and above all rents and charges payable out of and affecting the same. (Con. Stat. Can. cap 100, sec. 3.) The oath of qualification is in substance the same. (*Ib.*)

(*t*) These officers are by the preceding section made *ex officio* Justices, and so the property qualification of ordinary Justices of the Peace, as well as the taking of the ordinary oath, is dispensed with as to them.

(*u*) Which may be done pursuant to sec. 15.

(*v*) A power to issue a commission appointing Justices for a city though not expressly recognized as in the case of towns (sec. 361), seems to be implied. At all events, the Mayor and Aldermen of a city are *ex officio* Justices of the Peace for such city. (Sec. 357.)

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County Justices to have no jurisdiction in Cities but Quarter Sessions may be held therein.

360. Justices of the Peace for a County in which a City lies, shall, as such, have no jurisdiction over offences committed in the City, and the warrants of County Justices shall require to be indorsed before being executed in a City, in the same manner as required by law when to be executed in a separate County; (*w*) but the general and adjourned Quarter Sessions of the Peace for the County may be held and the jurisdiction thereof exercised in the City; (*x*) and any Justice of the Peace for the County may issue any warrant to try or investigate any case in a City when the offence has been committed in the County or Union of Counties in which such City lies or which such City adjoins. (*y*)

Governor may appoint for Towns.

Jurisdiction of County Justices in certain Towns.

361. Nothing herein contained shall limit the power of the Governor to appoint under the Great Seal of the Province any number of Justices of the Peace for a town, (*a*) or shall interfere with the jurisdiction of Justices of the Peace for the county in which a town having no Police Magistrate, is situate, over offences committed in the town. (*b*)

What only shall be necessary in convictions under By-laws.

362. It shall not be necessary in any conviction made under any By-law of any Municipal Corporation, to set out the information, appearance or non-appearance of the defendant, or the evidence or By-law, under which the conviction is

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(*w*) For the purpose specified in this section, every city is a county in itself. (Sec. 356.)

(*x*) The jurisdiction may be exercised "in the city," but not over offences committed therein. Courts of Quarter Sessions may sit, issue process, try causes, and transact all other business within a city, but they have no authority to try offences committed in the city. In cities, the Recorder's Courts are substitutes for Quarter Sessions. (Sec. 368.)

(*y*) This part of the section is new, and intended to remove a difficulty which arose in *The Queen* v. *Row*, 14 U. C. C. P. 307.

(*a*) The common law has ever had a special regard for the conservation of the peace; for peace is the very end and foundation of civil law. The Queen is by her office and dignity royal the principal conservator of the peace within all her dominions, and may by prerogative give authority to any other to see the peace kept, and punish those who break it. She is also the fountain of justice, and in right of both these prerogatives has from a very early period exercised the power of appointing Justices of the Peace by commission. (Lamb, 85, 43.)

(*b*) County Justices retain a general jurisdiction over towns situated within their county or union of counties, subject to the special exceptions stated in this section.

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made, (*c*) but all such convictions may be in the form given in the following Schedule : (*d*)

SCHEDULE.

Form.

PROVINCE OF CANADA, County of ——, TO WIT. } Be it remembered, that on the —— day of ——, A. D. —— at ——, in the County of ——, A. B. is convicted before the undersigned, one of Her Majesty's Justices of the Peace in and for the said County, for that the said A. B. (*stating the offence, and time and place, and when and where committed,*) contrary to a certain By-law of the Municipality of the —— of ——, in the said County of ——; passed on the —— day of —— A. D. ——, and intituled : (*reciting the title of the By-law*) and I adjudge the said A. B., for his said offence, to forfeit and pay the sum of ——, to be paid and applied according to law, and also to pay to C. D., the complainant, the sum of ——, for his costs in this behalf. And if the several sums be not paid forthwith, (*or* on or before the —— day of ——, A.D. ——, *as the case may be,*) I order that the same be levied by distress and sale of the goods and chattels of the said A. B. ; and in default of sufficient distress, I adjudge the said A. B. to be imprisoned in the common Jail of the said county of —— (*or* in the public Lock up at ——) for the space of —— days, unless the said several sums, and all costs and charges of conveying the said A. B. to such Jail *or* Lock-up) shall be sooner paid.

Given under my hand and seal, the day and year first above written, at ——, in the said county.

[L.S.] J. M., *J. P.*

Compelling witnesses to attend, &c.

363. In prosecuting under any By-law, or for the breach of any By-law, witnesses may be compelled to attend and give evidence, in the same manner and by the same process as witnesses are compelled to attend and give evidence on summary proceedings before Justices of the Peace in cases tried summarily under the Statutes now in force.(*e*)

(*c*) The law was formerly otherwise. (*The Queen* v. *Ross*, H. T. 3 Vic., M. S., R. & H. Dig. Conviction, 4.)

(*d*) It is not said that the conviction *shall* be in the form given, but where the Legislature gives a form, it is always safer and better, when applicable, to follow it.

(*e*) If it be made to appear to any Justice of the Peace by the oath or affirmation of any credible person, that any person within the jurisdiction of such Justice is likely to give material evidence on behalf of the prosecutor or complainant or defendant, and will not

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Jurisdiction of Justices under by-laws.

364. Every Justice of the Peace for a County shall have jurisdiction in all cases arising under any By-law of any Municipality in such County, where there is no Police Magistrate. (*f*)

Mayor may call out posse.

Powers of.

365. The Mayor of any City or Town may call out the Posse to enforce the law within his Municipality, should exigencies require it, but only under the same circumstances in which the Sheriff of a county may now by law do so. (*g*)

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voluntarily appear at the time and place appointed for the hearing of the information or complaint, the Justice shall issue his summons to such person, under his hand and seal, requiring him to be and appear at a time and place mentioned in such summons, before the Justice, or before such other Justice or Justices of the Peace for the territorial division, as may then be there to testify what he knows concerning the information or complaint. (Con. Stat. Can. cap. 103, sec. 16.) If the person summoned neglect or refuse to appear at the time and place appointed by the summons, and no just excuse be offered for such neglect or refusal, then (after proof upon oath or affirmation of the summons having been served upon such person either personally or by leaving the same for him with some person at his last or most usual place of abode) the Justice or Justices before whom such person should have appeared, may issue a warrant under his or their hands and seals, to bring and have such person at a time and place to be therein mentioned, before the Justice who issued the summons, or before such other Justice or Justices of the Peace for the same territorial division as may be then there, to testify as aforesaid. (*Ib.* sec. 17.) The warrant may, if necessary, be backed, in order to its being executed out of the jurisdiction of the Justice who issued it. (*Ib.*)

(*f*) The meaning of this section is not free from doubt. The language used is very comprehensive. *Every* Justice of the Peace for a county shall have jurisdiction in *all cases* arising under *any* by-law of *any* Municipality in such county where there is no Police Magistrate. This is broad enough to give jurisdiction to County Justices in the cases mentioned, over offences against by-laws committed in cities and towns withdrawn from the jurisdiction of the counties in which situate, and which cities and towns, for municipal and certain judicial purposes, are counties of themselves (sec. 356), provided there be no Police Magistrate in such cities and towns. But it is doubtful if the Legislature really intended to give such an extended operation to the section.

(*g*) "*Posse Comitatus*," or power of the county, includes the aid of and attendance of every person above the age of fifteen within the county. Persons able to travel are required to be assistant in this service. It is used when a riot is committed, a possession is kept on a forcible entry, or any force or rescue made, contrary to the Queen's writ or in opposition to the execution of justice. The power is usually summoned by the Sheriff. But with respect to writs that issue in the first instance to arrest in civil suits, the Sheriff is not bound to take the *posse* to assist him in the execution of them,—though he may do so if he pleases, on forcible resist-

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366. The head of every Council, or in his absence the Chairman thereof, may administer an oath or affirmation to any person, concerning any account or other matter submitted to the Council. (*h*) Heads of Councils to administer oaths, &c.

POLICE OFFICE.

367. The Council of every Town and City shall establish therein a Police Office; and the Police Magistrate, (*i*) or, in his absence, or where there is no Police Magistrate, the Mayor of the Town or City, shall attend at such Police Office daily, or at such times and for such period as may be necessary for the disposal of the business brought before him as a Justice of the Peace; and any Justice of the Peace having jurisdiction in a Town may, at the request of the Mayor thereof, act in his stead at the Police Office; (*j*) but, except in cases of urgent necessity, no attendance is required on Sunday, Christmas Day, or Good Friday, or any day appointed by proclamation for a Public Fast or Thanksgiving. (*k*) Police Offices in cities and towns.

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ance to the execution of the process. Sheriffs, &c., are to be assisting Justices of the Peace in suppressing riots, &c., and raise the *posse* by charging any number of men to attend for that purpose, who may take with them such weapons as shall be necessary, and they may justify the beating and even killing such rioters as resist or refuse to surrender; and persons refusing to assist in the *posse* may be fined and imprisoned. It is lawful for a peace-officer to assemble a competent number of people and sufficient power to suppress rebels, rioters, &c.; but there must be great caution, lest under a pretence of keeping the peace, the peace officer cause a breach of it; and Sheriffs, &c., are punishable for using heedless violence or alarming the country in these cases without just ground. (See Tomlin. Law Dic. "Posse Comitatus;" Watson's Office of Sheriff, 2 Edn. 2, 73, 193.)

(*h*) Such is, in effect, the provision contained in sec. 184 of this act.

(*i*) As to the appointment of a Police Magistrate, see sec. 371.

(*j*) The persons who may preside at the Police Court are the Police Magistrate, Mayor, and any Justice of the Peace having jurisdiction in a town:

1. The Police Magistrate, if able, daily, or at such times and for such period as may be necessary for the disposal of the business.
2. The Mayor, if no Police Magistrate, or in the absence of the Police Magistrate, is to perform the same duties.
3. Any Justice of the Peace having jurisdiction in a town, at the request of the Mayor thereof.

(*k*) The urgency of each case, as to whether it amounts to a necessity or not, must in the first instance be determined by the Police Magistrate, &c.

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RECORDERS' COURTS AND POLICE MAGISTRATES.

Recorder's Court.

Recorder's Court in cities.

368. There shall be in every City a Court of Record, to be called the Recorder's Court of the City, and therein the Recorder, alone or assisted by one or more of the Aldermen, shall preside; or in the absence of the Recorder, or when there is no Recorder, the Police Magistrate or Mayor (and in their absence one of the Aldermen elected by themselves), assisted by one or more Aldermen, shall preside; (*l*) and the Court shall, as to crimes and offences committed in the City, and as to matters of civil concern therein, have the same jurisdiction and powers, and use the like process and proceedings, as Courts of Quarter Sessions of the Peace in Counties. (*m*)

Jurisdiction of.

(*l*) The persons who are to preside at a Recorder's Court are the Recorder, the Police Magistrate, the Mayor or an Alderman.

1. The Recorder, either alone or assisted by one or more Aldermen.
2. The Police Magistrate, assisted by one or more Aldermen, in the absence of the Recorder, or where there is no Recorder.
3. The Mayor, assisted by one or more Aldermen, in the absence either of the Recorder or Police Magistrate.
4. One of the Aldermen, elected by themselves, assisted by one or more Aldermen, in the absence of the Recorder, Police Magistrate and Mayor.

(*m*) There are three different kinds of Sessions holden by Justices of the Peace:

1. General Sessions, which may be holden at any time of the year, for the general execution of the authority of Justices.
2. The General Quarter Sessions, which are holden at stated times in the four quarters of the year.
3. A Special or Petty Sessions, which is holden on any special occasion, for the execution of some particular branch of the authority of the Justice. (See 2 Hawk. P. C. cap. 8, sec. 47.)

The second, or "Court of Quarter Sessions of the Peace," is the one mentioned in this section. Its jurisdiction, by statute 34 Edw. III. cap. 1, extends to the trying and determining all felonies and trespasses whatsoever, though they seldom if ever try any capital offence, their commissions providing that if any case of difficulty arises, they shall not proceed to judgment, but in the presence of one of the Judges of the Court of Queen's Bench or Common Pleas, or one of the Judges of Assize; and therefore murders and other capital offences are usually remitted for a more solemn trial to the assizes. All powers and jurisdictions to try treasons and felonies, for conviction whereof the punishment of death is imposed, and which powers and jurisdictions are by any law or statute whatsoever granted or confirmed, or which are in any other manner vested in or exercised by any Court of Quarter Sessions or Recorder's Court of this Province, are absolutely revoked and determined. (24 Vic. cap. 14, sec. 1.) The Quarter Sessions have cognizance of all offences which tend to a breach of the peace,

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RECORDERS AND POLICE MAGISTRATES.

369. The Recorder shall be a Barrister of Upper Canada, of not less than five years' standing. (*n*) Recorder, qualification of.

370. Every Recorder shall receive a salary of not less than one thousand dollars, and his salary shall be defrayed from and out of the Fee Fund from which the salaries of County Judges are defrayed. (*o*) Salary of Recorder.

371. All Cities and all Towns having more than five thousand inhabitants shall have a Police Magistrate, (*p*) and Police magistrate, *As amended by cap. 82.*

except forgery and perjury. (*The King* v. *Higgins*, 2 East. 18.) The general words in the commission of the peace, "including all trespasses," comprehend not only direct breaches of the peace, but also all such offences as have a tendency thereto; and on this ground conspiracies and libels, or any illegal solicitations, attempts or endeavours to commit crimes, have been holden to be cognizable by Quarter Sessions. (*The King* v. *Higgins*, 2 East. 23; *The King* v. *Summers*, 3 Salk. 104; *The King* v. *Rispal*, 3 Burr. 1320.) They cannot take cognizance of forgery as a cheat, but over other cheats in general their jurisdiction is undoubted. (*The King* v. *Gibbs*, 1 East. 173.) The Sessions cannot try any newly created offence, without express power given them by the statute which creates it. (*Roop* v. *Scritch*, 4 Mod. 379; *The Queen* v. *Yarrington*, 1 Salk. 406.) The Chairman of the Sessions, in a matter of appeal, has no power to grant the certificate of acquittal intended by Con. Stat. Can. cap. 91, sec. 42. (*Westbrook* v. *Calaghan*, 12 U. C. C. P. 616.) The court may grant a new trial at the same sittings at which a conviction is had. (*The Queen* v. *Fitzgerald*, 20 U. C. Q. B. 546.) If refused, there may be an appeal to one of the superior courts of law. (*The Queen* v. *McLean*, 22 U. C. Q. B. 443) The proper proceeding to reverse a judgment of the Quarter Sessions is by writ of error, not by *certiorari* and *habeas corpus*. (*The Queen* v. *Powell*, 21 U. C. Q. B. 215.) The chairman cannot, in general, make an order of the Court, except during a session, either regular or adjourned. (*In re Coleman, Clerk of the Peace for the County of Hastings*, 23 U. C. Q. B. 615.) The English statute 16 Car. I. Cap. 10, applies only to the Court of Star Chamber, and other courts therein named, and not to such tribunals as Recorder's Courts in Upper Canada. (*Stark* v. *Ford*, 11 U. C. Q. B. 363.)

(*n*) In the case of a County Judge, he must be a barrister of at least five years' standing *at the bar of Upper Canada*. (Con. Stat. U. C. cap. 15, sec. 2.) Here it is only required that the Recorder shall be "a barrister of Upper Canada," and probably an English barrister of five years' standing, though recently called to the Upper Canada bar, would be held qualified to be a Recorder, though not a County Judge.

(*o*) The minimum, not maximum, salary, it will be observed, is here given, and the fund whence it is to be taken, viz., the Fee Fund, from which the salaries of County Judges are defrayed.

(*p*) It may be held, that the right of a town, having only five thousand inhabitants or less, to have a Police Magistrate is here impliedly denied; but every Police Magistrate appointed before the passing of this act in any town with a less population than five thousand is not to be affected by this section.

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the salaries of such Police Magistrates shall not be less than on the following scale: (*q*)

Salary of Police Magistrate.

In Towns—Where the population is over five thousand and under six thousand, four hundred dollars per annum; where the population is over six thousand and under eight thousand, six hundred dollars per annum; where the population is over eight thousand, one thousand dollars per annum: Provided always, that every Police Magistrate appointed before the passing of this Act, in any Town with a less population than five thousand, shall not be affected by this section.

Proviso.

In Cities.

In Cities—Twelve hundred dollars per annum; but any salary of a larger amount that is paid to any Police Magistrate at the time of the passing of this Act, shall be continued whilst such Police Magistrate remains in office.

Tenure of office.

372. Every Police Magistrate shall hold office during pleasure. (*r*)

Recorders and police magistrates to be J. P's *ex officio*.

373. Every recorder and police magistrate shall *ex officio*, be a justice of the peace for the city or town for which he holds office, as well as for the county or union of counties in which the city or town is or was situate; (*s*) but no other justice of

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(*q*) The scale is as follows:

In *Towns*—					
Population *over* 5000	and *under* 6000	.....	Salary,	$400
" " 6000	" 8000	.....	"	$600
" " 8000	.....		"	$1000
In *Cities*—Whatever the population	.....		"	$1200

It is presumed, though not so expressed, that the salary is to be in lieu of all fees,—the salary being the sole compensation fixed for the services performed. (See sec. 374, as to the Clerk of the Court.) It is not said whence the salary is to come or upon whom devolves the duty of paying it. Under the old law it was held that a Police Magistrate could maintain an action of debt for his salary against the Municipal Corporation of which he was Police Magistrate. (*Wilkes v. The Town Council of Brantford*, 3 U. C. C. P. 470.)

(*r*) Though not so expressed, it is presumed that the appointment is to be made by the Queen, who is the universal officer and dispenser of justice within the realm. (Bac. Ab. Offices, B.) But though all offices in relation to the administration of justice were originally and inherently lodged in the Crown, yet the Queen cannot grant these in any other manner than warranted by the statute or other authority creating them. (*Ib.* H.) Offices in respect to their duration and continuance are distinguished into those which are of inheritance, in fee, fee tail, freehold, for years, and during will and pleasure. (*Ib.*) The office of Police Magistrate is, by the section here annotated, held only "during pleasure."

(*s*) This has already been in effect enacted by sec. 357.

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the peace shall adjudicate in any case for any town or city where there is a police magistrate, except in the case of the illness, absence, or at the request of the police magistrate. (*t*)

THE CLERK.

Clerk of Police office; and his duties.

374. The Clerk of the Council of every city or town or such other person as the Council of the city or town may appoint for that purpose, shall be the Clerk of the Police Office thereof, and perform the same duties and receive the same emoluments as Clerks of Justices of the Peace, and the City Clerk, or such other person as the Council of the city may appoint for that purpose, shall also be Clerk of the Recorder's Court, and shall perform the same duties, and receive the same emoluments as Clerks of the Peace; (*tt*) and in case the said Clerks or either of them, are or is paid by a fixed salary, the said emoluments shall be paid by them or him to the municipality, and form part of its funds, and such Clerk shall be the officer of and under the police magistrate. (*u*)

Clerk of Recorder's Court fees or salary.

SESSIONS OF RECORDER'S COURT.

Sessions of Recorder's Court.

375. The Recorder's Court shall hold four sessions in every year and such sessions shall commence on the first Monday in the months of March, June and September, and on the third Monday in the month of December. (*v*)

Jurors.

376. The panels of Grand Jurors shall consist of twenty-four persons, and the panels of the Petit Jurors of not less

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(*t*) See sec. 364.

(*tt*) It has been held, that the duty of selecting and drafting jurors for a city belongs to the Clerk of the Recorder's Court of the city, and not to the Clerk of the Peace of the county in which the city is situate (*In re McNab and Daly*, 22 U. C. Q. B. 170); but that returns of convictions made by aldermen of cities must be returned, as heretofore, to the General Quarter Sessions of the Peace for the county, and not to the Recorder's Court for the city. (*Keenahan, q. t.*, v. *Egleson*, 22 U. C. Q. B. 626.)

(*u*) The appointment of Police Clerks and Clerks of Recorder's Courts rests with the Municipal Councils. The Clerk of each Council is to act *ex officio* in the absence of any other appointment. Whether he acts *ex officio* or is appointed to act, if in receipt of a fixed salary as Clerk of the Council, the fees appertaining to his office as Clerk, either of the Police or Recorder's Court, are to be paid by him to the Municipality and form part of its funds.

(*v*) Though the Recorder's Court has, as to crimes and offences committed in the city, &c., the same jurisdiction and powers, and uses the like process and proceedings as Courts of Quarter Sessions (sec. 368), the days for the sittings or sessions differ. For Quarter Sessions the days are the second Tuesday in the months of March, June, September and December. (Con. Stat. U. C. cap. 17, sec. 2.)

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than thirty-six nor more than sixty persons; (*w*) and all such persons shall be residents of the city, selected to serve as Jurors under the Laws relating to Jurors. (*x*)

High Bailiff to summon.

377. The High Bailiff of a city, not made a separate county for all purposes, shall ballot for and summon the jurors, under a precept signed by the Recorder, or by the Mayor, or the Alderman elected to act in the Recorder's place, in the manner appointed by the Laws relating to Jurors. (*y*)

Costs of persons acquitted of misdemeanor.

378. On the acquittal of any person tried for misdemeanor in a Recorder's Court the presiding Officer shall, if the Court is satisfied that there was reasonable and probable cause for the prosecution, order the costs thereof to be taxed by the Clerk, and to be paid out of the City Funds. (*z*)

EXPENSES OF RECORDER'S COURT.

Expenses of criminal Justice in Recorder's Court how paid.

379. The expenses of the administration of justice in criminal cases in the Recorder's Court shall be defrayed out of the Consolidated Revenue Fund, in like manner and to the like extent as the expenses attending the administration of justice in criminal cases in the several Courts of Quarter Sessions in Upper Canada. (*a*)

(*w*) See Con. Stat. U. C. cap. 31, sec. 132 to sec. 137 inclusive.

(*x*) See note *r* to sec. 75.

add a/

(*y*) The duties under the Jurors Act required of High Bailiffs or other similar officers of cities, and those also required of Clerks of the Peace and of the Clerks of Recorder's Courts of cities, may be performed either by the principal officer himself or by his deputy. (Con. Stat. U. C. cap. 31, sec. 138.)

(*z*) In cities where the Clerks are paid by fixed salaries, all the emoluments of the Court are paid by the Clerks to the Municipality and form part of its funds. So that when costs of a prosecution are to be paid, it is only proper under these circumstances, that such costs should be paid out of the city funds.

(*a*) The whole of the expenses of the administration of criminal justice in Upper Canada should be paid out of the Consolidated Revenue Fund of the Province. (Con. Stat. U. C. cap. 120.) All accounts of or relative to such expenses, must be audited, vouched and approved under such regulations as the Governor in Council from time to time directs and appoints. (*Ib.* sec. 2.) The several heads of expense mentioned in the schedule to the act, are deemed expenses of the administration of criminal justice within the meaning of the act. (*Ib.* sec. 3.) See *In re Pousett and the County of Lambton*, 21 U. C. Q. B. 472; S. C. 22 U. C. Q. B. 80.

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INVESTIGATIONS BY RECORDER UNDER RESOLUTION OF CITY COUNCIL.

Investigation by Recorder of charges of malfeasance.

380. In case the Council of any City at any time passes a resolution (*b*) requesting the Recorder of the City to investigate any matter to be mentioned in the resolution and relating to a supposed malfeasance, breach of trust, or other misconduct on the part of any member of the Council or officer of the Corporation, or of any person having a contract therewith, in relation to the duties or obligations of the member, officer, or other person, to the City, (*c*) or in case the Council of any City sees fit to cause inquiry to be made into or concerning any matter connected with the good government of the City, or the conduct of any part of the public business thereof, (*d*) and if the Council at any time passes a resolution requesting the Recorder of the City to make the inquiry, the Recorder shall inquire into the same, (*e*) and shall for that purpose have all the powers of Commissioners under the Consolidated Statutes of Canada respecting inquiries concerning public matters and official notices, (*f*) and the Recorder shall, with all convenient speed, report to the Council the result of the inquiry and the evidence taken thereon. (*g*)

To have powers under Consolidated Stats. of Canada, cap. 13.

(*b*) *Resolution*—See note *l* to sec. 190.

(*c*) So far the investigation authorized is to be one relating to a "supposed breach of trust, *or other misconduct*," &c. The section extends to all members of the Council as well as officers of the Municipality, and to all persons having contracts with the Council. The object of the enactment is manifestly to facilitate the detection and correction of abuses.

(*d*) The design of this part of the section is to embrace cases not falling within the preceding.

(*e*) It is enacted that if the Council at any time passes a resolution requesting the Recorder to make the inquiry, he *shall* inquire into the same. The duty is imperative.

(*f*) Commissioners so appointed have the power of summoning before them any party as witnesses, and of requiring them to give evidence on oath, orally or in writing (or on solemn affirmation, if they are parties entitled to affirm in civil matters), and to produce such documents and things as such Commissioners think requisite to the full investigation of the matters into which they are appointed to examine (Con. Stat. Can. cap. 13, sec. 1); and the Commissioners have the same power to enforce the attendance of such witnesses, and to compel them to give evidence, as is vested in any court of law in civil cases. (*Ib.*)

(*g*) The Recorder is not only to report to the Council the *result* of the inquiry, but the *evidence* taken thereon.

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CITY DIVISION COURT.

Division Court may be held by Recorder.

381. The Governor may, by Letters Patent under the Great Seal, appoint the Recorder to preside over and hold the Division Court of that Division of the County which includes the City; (*h*) and in such case, as long as the Letters Patent remain unrevoked, (*i*) the Recorder shall have the powers and privileges and perform the duties otherwise belonging to the County Court Judge as Judge of the Division Court, (*j*) and during such period the authority and duties of the County Judge or Judge of such Division Court shall cease, (*k*) except as in this Act provided. (*l*)

Salary as Judge of Division Court.

382. The Governor-in-Council shall fix an annual salary, to be paid to the Recorder for performing such duties, regard being had, in fixing the same, to the population resident within the jurisdiction of such Division Court, the amount accruing from the Court to the Fee Fund, the amount of the salary of the

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(*h*) There are not less than three nor more than twelve Division Courts in each county or union of counties, of which one must be in and for each city and county town. (Con. Stat. U. C. cap. 19, sec. 3.) The Justices of the Peace for each county, in general Quarter Sessions assembled, may, subject to the restrictions in the Division Court Act contained, appoint, and from time to time alter, the number, limits, and extent of every division, and number the divisions, beginning at No. 1 (*Ib.* sec. 8); and a less number of Justices shall not alter or rescind any resolution or order made by a greater number at any previous session. (*Ib.*) See also statute 29 Vic. cap. 31, as to a new mode of establishing additional Division Courts.

(*i*) Words authorizing the appointment of any public officer or functionary, include the power of removing him, re-appointing him, or appointing another in his stead, in the discretion of the authority in whom the power of appointment is vested. (Con. Stat. Can. cap. 5, sec. 6, sub-sec. 22.)

(*j*) The powers and privileges and duties of a Division Court Judge can only be ascertained upon an examination of the various provisions of the Division Courts Act, Con Stat. U. C. cap. 19. So long as he acts within his jurisdiction he is not responsible for any error of judgment or mistake of law. (*Kemp* v. *Neville*, 10 C. B., N. S., 523; *Stark* v. *Ford*, 11 U. C. Q. B. 363.) The law is different where he acts in a ministerial capacity. (*Parks* v. *Davis*, 10 U. C. C. P. 229.)

(*k*) It is not intended that the County Judge and Recorder shall have co-ordinate jurisdiction our the same City Division Court. Whenever the latter is authorized to hold the court, the authority of the former ceases. While a Recorder is authorized to hold a Division Court, he is not allowed to practice as a barrister, advocate, attorney, solicitor, or proctor in *any* court of law or equity. (Sec. 383.)

(*l*) See sec. 384.

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Recorder as such, and the amount of the salaries of the County Court Judges in Upper Canada, and the salary shall be subject to be altered, in the like way, and shall be paid out of the like fund and in the like manner as the salary of the County Judge in and for the County in which the city is situated. (*m*)

Recorder, when not to practice at the bar.

383. While a Recorder is authorized to hold the Division Court, he shall not practise as a Barrister, Advocate, Attorney, Solicitor or Proctor in any Court of Law or Equity. (*n*)

Absence of Recorder provided for.

384. In case of the Recorder's illness or unavoidable absence, or absence by leave of the Governor while such Letters Patent are in force, the Judge of the County Court of the County in which the City lies, may officiate for the Recorder as Judge of such Division Court, and in every other capacity pertaining to the office of the Recorder as Judge of such Division Court; (*o*) or the Recorder may, by an instrument in writing under his hand and seal, appoint a Barrister of Upper Canada to act for him as Judge of such Division Court, with like powers as aforesaid; (*p*) but no such appointment shall continue in force for more than one month, unless renewed in like form. (*q*)

Appointment of Deputy.

Form of.

385. Every such instrument shall contain a recital of the cause which renders the appointment therein contained necessary, and shall be executed in triplicate, and the Recorder

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(*m*) The Recorder is to receive an annual salary for performing the duties mentioned in the last section. The salary is to be fixed by the Governor-in-Council. It is not to be arbitrarily fixed, but with regard to the following data:

1. The population resident within the jurisdiction of the Division Court.
2. The amount accruing from that Court to the Fee Fund.
3. The amount of the salary of the Recorder as Recorder. (See s. 370.)
4. The amount of the salaries of the County Judges in Upper Canada.

(*n*) County Judges are not allowed to act as conveyancers, or to do any manner of conveyancing, or prepare any papers or documents to be used in any Court in the Province. (29 Vic. cap. 30.)

(*o*) The Judge of the County Court of the county in which the division presided over by the Recorder is situate, may officiate for the Recorder in either of three events: first, the illness of the Recorder; secondly, absence by leave of the Governor; and, thirdly, unavoidable absence.

(*p*) He may appoint *any* barrister, no matter of how few years' standing at the bar. The Governor may annul any such appointment, and may appoint another barrister to act for the Recorder. (Sec. 386.)

(*q*) That is, no appointment by the Recorder under this section shall be of longer duration than one calendar month, unless renewed in the form directed. (See sec. 385.)

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shall file one of the triplicate originals in the office of the Clerk of such Division Court, and shall deliver or send to the person so named to officiate for him another thereof, and shall transmit the third to the Provincial Secretary for the information of the Governor. (*r*)

Governor may supersede and substitute another.

386. The Governor may, by an instrument under his Privy Seal, annul any such appointment; and may, if he thinks fit, by the same instrument or any other instrument under his Privy Seal, appoint another Barrister of Upper Canada to act for the Recorder in the place of the Barrister appointed by the Recorder. (*s*)

JURORS AND WITNESSES.

Competency.

Competency of jurors and witnesses.

387. In any prosecution, suit, action or proceeding to which a Municipal Corporation is a party, no member, officer or servant of the Corporation shall, on account of his being such, be an incompetent witness, (*t*) or be liable to challenge as a juror. (*u*)

(*r*) Provision is in this section made, as well for the form of the instrument as for the disposal of it when executed. It must contain a recital of the cause which renders the appointment necessary, and must be executed in triplicate. It must be under seal. (See. 384.) When executed in triplicate, the copies are to be disposed of as follows: one copy to be filed in the office of the Clerk of the Division Court; the second to be delivered to the person named therein; and the third to be transmitted to the Provincial Secretary.

(*s*) The Governor may,

1. Annul the appointment.
2. Appoint another barrister of Upper Canada to act for the Recorder, in the place of the barrister appointed by the Recorder.

The power of the Governor must be exercised by an instrument under the privy seal. He may, by the same instrument or any other instrument under the like seal, make the new appointment.

(*t*) Although in the ordinary affairs of life temptations to practise deceit and falsehood may be comparatively few, and therefore men may in general be disposed to rely on the statements of each other, yet in judicial investigations the motives to pervert the truth and to perpetrate falsehood and fraud are so greatly multiplied, that if misstatements were believed in courts of justice with the same undiscriminating credulity as in private life, much wrong would be unquestionably done. The danger of injustice arising from this cause, which doubtless should induce both judges and juries to watch with cautious suspicion the evidence laid before them, especially when it comes from an interested and polluted source, has till recently been thought to justify the observance of a distinction between competent and incompetent witnesses; and with a view of rendering the evil as inoperative

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EXEMPTIONS.

Exemptions of citizens as jurors.

388. The inhabitants of a City, not a separate County for all purposes, (*a*) shall be exempt from serving on juries, any other than the City Courts and Courts of Assize and Nisi Prius, Oyer and Terminer and General Goal Delivery for the County in which the City is situate, and on trials at bar before the Superior Courts of Common Law. (*b*)

Exception.

HIGH BAILIFFS AND CONSTABLES.

High Bailiffs and Constables.

389. The Council of every City shall appoint a High Bailiff, but may provide by by-law that the offices of High Bailiff and Chief Constable shall be held by the same person. (*c*)

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as possible, it was long deemed expedient that the testimony of some particular classes of persons should be uniformly *excluded* (2 Taylor on Evidence, 2 Edn. 1040); but of late, the rule both in England and in Upper Canada has been much relaxed. (Con. Stat. U.C. cap. 32, ss. 3, 4.) But still a distinction is to be observed between the *competency* and the *credibility* of a witness. This section makes competent in any prosecution, &c., in which a municipal corporation is a party, any *member, officer* or *servant* of the corporation. The question of competency is, whenever it arises, one to be determined by the court. (*Bartlett* v. *Smith*, 11 M. & W. 483.)

(*a*) To challenge a juror is to take exception to his right to sit, either from want of qualification or on account of interest, &c. (See Con. U.C. cap. 31, sec. 98, *et seq.*)

(*a*) See note *p* to sec. 356.

(*b*) To make the exemption complete, some reference should have been made to the Court of Chancery, which is now empowered to direct issues to be tried by a jury. (See Con. Stat. U. C. cap. 12, sec. 69, and sec. 34, sub-sec. 2.)

(*c*) A Constable is an officer of great antiquity. (Bac. ab. Constable, A.) The office was originally instituted for the better preservation of the peace. (*Ib.* C.) A constable is the proper officer to a Justice of the Peace, and so is bound to execute warrants. (*Ib.* D.) If a constable be sued for anything done in the execution of his office, he and all who assist him may plead the general issue, and give the special matter in evidence. (*Ib.*) There may be one or more constables for each ward of a city or town (sec. 390), or as many constables and other officers and assistants as the Council may deem necessary. (Sec. 396.) The Chief Constable is the constable appointed to have precedence over other constables, and to superintend and control them. (*Ib.*) His duties usually differ from those of the High Bailiff. The latter is, as it were, Sheriff of the city; and yet it has been held that it is the duty of the Sheriff of the county in which the city is situate, and not of the High Bailiff of the city, to convey to the Penitentiary prisoners sentenced at the Recorder's Court. (*Glass* v. *Wigmore*, 21 U. C. Q. B. 37.) Every city must, under the section here annotated, appoint a High Bailiff, and may by by-law direct that the offices of High Bailiff and Chief Constable shall be held by the same person. Until the organization of a Board of

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Chief Constable.

390. Until the organization of a Board of Police as hereinafter mentioned, (*d*) the Council of the city or town shall appoint one Chief Constable for the municipality, and one or more Constables for each Ward, and the persons so appointed shall hold office during the pleasure of the Council. (*e*)

Arrests by Constables for alleged breaches of the Peace (not within view) when sanctioned.

391. In case any person complains to a Chief of Police, or to a Constable or Bailiff in a town or city, of a breach of the peace having been committed, and in case such officer has reason to believe that a breach of the peace has been committed, though not in his presence, and that there is good reason to apprehend that the arrest of the person charged with committing the same is necessary to prevent his escape or to prevent a renewal of the breach of the peace, or to prevent immediate violence to person or property, then if the person complaining gives satisfactory security to the officer that he will without delay appear and prosecute the charge before the Police Magistrate or before the Mayor or sitting Justice, such officer may, without warrant, arrest the person charged in order to his being conveyed as soon as conveniently may be before the Magistrate, Mayor, or Justice, to be dealt with according to law. (*f*)

Police, every city or town must appoint one Chief Constable and one or more constables for each ward. (Sec. 390.)

(*d*) See sec. 394.

(*e*) See note *c* to sec. 389.

(*f*) The object of this section is to remove doubts as to the authority of the peace officers named to make arrests without warrant for *misdemeanors* not committed within their view. Caution must, however, be exercised in making arrests under such circumstances. A magistrate's warrant is a great shield. Where an arrest is made without it, if it should turn out that the provisions of this section have been neglected, that the wrong person is arrested, or that proof is so slight that he is of necessity discharged, the officer might be held liable to an action for false imprisonment, which he would not be if shielded by a magistrate's warrant. (4 U. C. L. J. p. 159.)

To authorize an arrest without warrant, under this section, the following things must concur:

1. There must be a complaint to the officer of a breach of the peace *having been* committed.
2. The officer must have reason to believe that a breach of the peace has been committed. *And*,
3. That there is good reason to apprehend that the arrest of the person charged is necessary to prevent his escape, or to prevent a renewal of the breach of the peace, &c.
4. Satisfactory security to prosecute is to be given by the party complaining.

Every person, *as well as constables*, present when a *felony* is committed, or a dangerous wound given, not only may apprehend the offender

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392. Until the organization of a Board of Police, every Mayor, Recorder and Police Magistrate may, within his jurisdiction, suspend from office for any period in his discretion, the Chief Constable, or Constable of the town or city, and may, if he chooses, appoint some other person to the office during such period; and in case he considers the suspended Officer deserving of dismissal, he shall, immediately after suspending him, report the case to the Council, and the Council may dismiss such officer, or may direct him to be restored to his office after the period of his suspension has expired; (*g*)

Until a Board of Police is organized, Mayor, &c., may suspend Chief Constable, &c., from office.

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but is bound to do so. (*Beckwith* v. *Philby*, 6 B. & C. 634; *Mathews* v. *Biddulph*, 3 M. & G. 390; 2 Hawk. cap. 12, sec. 1; 1 East P. C. 377, sec. 1.) If a private person be present at an affray, he may stay the affrayers until the heat is over, and then deliver them over to a constable, and he may stop others coming to join either party. (*Timothy* v. *Simpson*, 16 C. M. & R. 757; *Ingle* v. *Bell*, 1 M. & W. 516; 2 Hawk. cap. 13, sec. 8; *Baynes* v. *Brewster*, 2 Q. B. 375.) So a private person may arrest after an affray, if there be reasonable ground to apprehend a renewal of it. (*Price* v. *Seely*, 10 Cl. & Fin. 28.) If a private individual state facts to a constable who thereupon on his own responsibility arrests a person, or if he procure a magistrate to issue a warrant for taking a person, the imprisonment is not his act and he may show this under the plea of not guilty. (*Barber* v. *Rollinson*, 1 C. & M. 330; *Stonehouse* v. *Elliott*, 6 T. R. 315; *Brandt* v. *Craddock*, 27 L. J. Ex. 314; *Grinham* v. *Wiley*, 4 H. & N. 496.)

A constable is justified in arresting without a warrant upon a reasonable suspicion of a *felony* having been committed and of the person being guilty of it, although no felony has in fact been committed, and whether the reasonable grounds for suspicion are matters within his own knowledge or facts stated to him by another. (*Davis* v. *Russell*, 5 Bing. 354; *Beckwith* v. *Philby*, 6 B. & C. 634; *Hogg* v. *Ward*, 3 H. & N. 417.) But a constable is not in general justified, except under the provisions of this section, in arresting a person for a *misdemeanor* without a warrant. (*Mathews* v. *Biddulph*, 3 M. & G. 390; *Griffin* v. *Coleman*, 4 H. & N. 265.) Unless there be a breach of the peace in his presence (*Timothy* v. *Simpson*, 1 C. M. & R. 757; *Derecourt* v. *Corbishley*, 5 El. & B. 188), or danger of a renewal of it. (*Queen* v. *Light*, 27 L J., M. C. 1; *Queen* v. *Walker*, 23 L. J., M. C. 123.) See note *t* to sec. 55, as to the difference between a felony and a misdemeanor.

(*g*) **The powers of the Mayor, Recorder or Police Magistrate, under this section, are:**

1. **To suspend from office for any period in his discretion, the Chief Constable or Constable of the town or city.**
2. **To appoint, if he chooses, some other person to the office during the period of suspension.**
3. **To report, if he considers the suspended officer deserving of dismissal, the case to the Council.**

But has of himself no power to dismiss—that rests with the Council.

And these powers are only to be exercised "Until the organization of a Board of Police."

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and the Recorder and City Council respectively shall have the like powers as to the High Bailiff of a city. (*h*)

Salary to be withheld during suspension.

393. During the suspension of such officer he shall not be capable of acting in his office except by the written permission of the Mayor, Recorder or Police Magistrate, who suspended him, nor during such suspension shall he be entitled to any salary or remuneration. (*i*)

BOARD OF POLICE.

Of whom composed.

Board of Police: of whom composed.

394. In every City there is hereby constituted a Board of Commissioners of Police, and such Board shall consist of the Mayor, Recorder, and Police Magistrate, and if there is no Recorder or Police Magistrate, or if the offices of Recorder and Police Magistrate are filled by the same person, the Council of the City shall appoint a person resident therein to be a member of the Board, or two persons so resident to be members thereof, as the case may require; (*j*) and such Commissioners shall have power to summon and examine witnesses on oath in all matters connected with the administration of their duties. (*k*)

Powers as to witnesses.

Quorum.

A majority to constitute a quorum.

395. A majority of the Board shall constitute a quorum, and acts of a majority shall be considered acts of the Board. (*l*)

During suspension the supended officer is incapable of acting in his office except by the written permission of the Mayor, Recorder or Police Magistrate, who suspended him, and is deprived during that period of all salary or remuneration. (Sec. 393.)

(*h*) See note *c* to sec. 389.

(*i*) See note *g* to sec. 392.

(*j*) The object of this and the following sections is, as much as possible, to make the police force of a city independent of the City Council. The control of the force is transferred from the Council to a Board of Police, which Board is constituted by this act. It is made to consist of the Mayor, Recorder, and Police Magistrate. It is only when there is no Recorder or Police Magistrate, or when these two offices are held by the same person, that the Council is authorized at all to interfere with the constitution or construction of the Board. The Board may appoint policemen (sec. 397), and fix the number of policemen requisite (sec. 396), and has power under this act (sec. 400) to fix the remuneration to be paid to them. Under the old law this was different. (See *In re Prince and the Corporation of the City of Toronto*, 25 U. C. Q. B. 175.)

(*k*) See note *f* to sec. 380.

(*l*) The design of the Legislature is, that the Board shall consist of *three* persons (sec. 394); so that it will require at least two to constitute a quorum.

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NUMBER OF THE POLICE FORCE.

396. The Police Force shall consist of a Chief Constable and as many Constables and other Officers and Assistants as the Council from time to time deems necessary, but not less in number than the Board reports to be absolutely required. (*m*)

Number of Police to be determined by Council.

APPOINTMENT OF POLICEMEN.

397. The members of the Police Force shall be appointed by and hold their offices at the pleasure of the Board, (*n*) and shall take and subscribe to the following oath: (*o*)

The Policemen to be appointed by the Board.

"I, A. B., do swear that I will well and truly serve our Sovereign Lady the Queen, in the office of Police Constable for the —— of ——, without favour or affection, malice or ill-will; and that I will, to the best of my power, cause the peace to be kept and preserved, and will prevent all offences against the persons and properties of Her Majesty's subjects; and that while I continue to hold the said office I will, to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law, and that I will not connect myself with, or attend the meetings of any secret society, while I am a member of the Police Force for the said —— of ——. So help me God."

Their oath of office.

POLICE REGULATIONS.

398. The Board shall, from to time, as they may deem expedient, make such regulations for the government of the Force and for preventing neglect or abuse, and for rendering the Force efficient in the discharge of all its duties. (*p*)

Board to make Police regulations.

(*m*) This section relates to the constitution and number of the force. It is to consist of a chief constable and as many constables and *other* officers and assistants as the *Council* from time to time deems necessary; but in no case to be less in number than the Board reports to be absolutely required. The only authority of the Council is subject to the provisions of the section to fix the number of the force, but not to appoint the members of the force. (See sec. 397.)

(*n*) The members of the force are, it will be observed, not only to be appointed by the Board, but to hold office during the pleasure of the Board—not the City Council (see note *m* above), and are, in other respects, to be subject to the government of the Board. (See secs. 398, 399.) Under the former act, the Board had no power to fix their salaries or remuneration. (*In re Prince and the Corporation of the City of Toronto*, 25 U. C. Q. B. 175.) But now, apparently, the law is otherwise. (Sec. 400.)

(*o*) See secs. 184 and 366.

(*p*) This section is badly worded. If the word "such" is to be retained, the words "as they may deem expedient" should follow the

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POLICE SUBJECT TO THE BOARD, &c.

The Policeman to be subject to the Board.

Duties of.

399. The Constables shall obey all lawful directions and be subject to the government of the Board, and shall be charged with the special duties of preserving the peace, preventing robberies and other felonies and misdemeanors, and apprehending offenders, and shall have generally all the powers and privileges, and be liable to all the duties and responsibilities which belong by law to Constables duly appointed. (*q*.)

REMUNERATION AND CONTINGENT EXPENSES.

Remuneration and contingent expenses.

400. The Council shall appropriate and pay such remuneration for and to the respective members of the force as shall be required by the Board of Commissioners of Police, and shall provide and pay for all such offices, watch-houses, watch-boxes, arms, accoutrements, clothing and other necessaries as the board may from time to time deem requisite and require for the payment, accommodation, and use of the Force. (*r*)

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word "regulations." Then the section would read,—"The Board shall from time to time make *such* regulations as they may deem expedient, for the government," &c. No such regulations are to be inconsistent with this statute or the law of the land. (See note *n* to sec. 191.)

(*q*) The duties of the constable are, as here defined:

1. To obey all lawful directions, and be subject to the government of the Board.
2. The preservation of the peace, preventing robberies and other felonies and misdemeanors, and apprehending offenders, and generally to have all the powers and privileges and be liable to all the duties and responsibilities which belong by law to constables duly appointed. (See sec. 391, and notes thereto.)

(*r*) The duties mentioned in this section are imposed upon the City Council, and not upon the Board.

These duties are:

1. To appropriate the remuneration required by the *Board* for the members of the force.
2. To pay the same.
3. To provide for all such offices, &c., as the *Board* may from time to time deem requisite.
4. To pay for the same.

If the Council wholly neglect and refuse to appropriate or pay the remuneration for and to the respective members of the force, required by the Board of Commissioners of Police, there would be a remedy. (See *In re Board of School Trustees of the City of Toronto and the Corporation of the City of Toronto*, 23 U. C. Q. B. 203.) Formerly the Board of Commissioners had not power to fix the remuneration, and when the law was so the court refused to interfere to compel

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COURT HOUSES AND PRISONS.

Gaols and Court Houses.

County Council may pass by-laws for buildings

401. Every County Council may pass By-laws for erecting, improving, and repairing a Court House, Gaol, House of Correction, and House of Industry, upon land being the property of the Municipality, and shall preserve and keep the same in repair, and provide the food, fuel, and other supplies required for the same. (*s*)

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the Council to pay the remuneration fixed by the Board. (See *In re Prince and the Corporation of the City of Toronto*, 25 U. C. Q. B. 175.)

(*s*) The powers and the duties of the County Council under this section are:

1. To *erect* and *improve* a Court House, Gaol, House of Correction, and House of Industry, upon land being the property of the Municipality.
2. To *preserve* and *keep the same in repair.*
3. To *provide* the food, fuel, and other supplies required for the same.

The Court House, from its very name as well as from the provisions of law requiring the erection of a Gaol and Court House in every county or union of counties, before they are constituted separate municipal authorities, is a building devoted to and intended for certain public uses. The Municipal Corporation may be considered as holding the building and the legal estate in it, for and subject to these uses, and would be guilty of a breach of trust and, as regards the courts of justice, of a high contempt, if they attempted to prevent its use for such purposes. (Per Draper, C. J., *In Municipal Council of Huron and Bruce* v. *Macdonald et al.*, 7 U. C. C. P. 278.) Gaols have always been considered of such universal concern to the public, that until powers were conferred upon Municipal Corporations to erect them, none could be erected except by authority of Parliament. (*The King* v. *The Justices of Newcastle*, Dra. Rep. 214.) But now, where a Municipal Corporation, having power, authorizes the building of a Gaol and Court House, the builder may, on the completion of the work, sue the Corporation for his money (*Keating* v. *The Council of the District of Simcoe*, 1 U. C. Q. B 28), even though there be no contract under seal. (*Pim* v. *The Municipal Council of Ontario*, 9 U. C. C. P. 302.) The Corporation, however, is not liable to be sued for the use and occupation of a room engaged by the Sheriff for the purposes of a court room, (*Dark* v. *The Municipal Council of Huron and Bruce*, 7 U. C. C. P. 378), nor for furniture supplied to the Court House on the order of magistrates in Quarter Sessions. (*In re Coombes and the Municipal Council of the County of Middlesex*, 15 U. C. Q. B. 367.) The fact that the Court House is also used as a Shire Hall for the sittings of the County Council, and the furniture made use of by them, can make no difference. (*Ib.*) Formerly, the responsibility of keeping the Court House in repair was thrown on the District Surveyor, and when the law was so, it was held that the

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Gaols and Court Houses to be common to Counties and Cities, &c., not separated.

402. The Gaol, Court House and House of Correction of the County in which a Town or City, not separated for all purposes from a County, (*t*) is situate, shall also be the Gaol, Court House and House of Correction of the Town or City; and shall in the case of such a City continue to be so until the Council of the City otherwise directs; (*u*) and the Sheriff, Gaoler and Keeper of the Gaol and House of Correction shall receive and safely keep until duly discharged, all persons committed thereto by any competent authority of the Town or City. (*v*)

Compensation by City or Town, how to be regulated and made.

403. While a City or Town uses the Court House, Gaol or House of Correction of the County, the City or Town shall pay to the County such compensation therefor, and for the care and maintenance of prisoners, as may be mutually agreed upon or be settled by arbitration under this Act. (*a*)

Municipal Corporation was not liable in damages for an injury resulting in death, occasioned to an individual in walking up the Court House steps, which had been allowed to fall into an unsafe condition. (*Hawkeshaw* v. *The District Council of the District of Dalhousie*, 7 U. C. Q. B. 590.) The Court has refused a rule for a mandamus to compel a County Coucil to build a Court House. (*Justices of the District of Huron* v. *The Huron District Council*, 5 U. C. Q. B. 574.)

(*t*) Where a city or town is separated for *all* purposes from the county in which situate, this section would be inapplicable.

(*u*) It is declared, first, that the gaol, &c., of the county in which a town or city is situate, shall also be the gaol, &c., of the town or city; and, secondly, in the case of a *city*, continue to be so until the Council of the city otherwise directs. It is apparently only the Council of a city, and not of a town, that has power to direct the erection of a separate gaol, &c.

(*v*) For instance, Police Magistrate or Justice of the Peace of such town or city.

(*a*) Arbitrators were appointed by articles of agreement, dated 28th December, 1855, to settle certain differences recited as pending between the city of London and the county of Middlesex, respecting the compensation to be paid by the city to the county for the use of the county Court-house and gaol, and concerning certain financial matters then depending between the respective municipalities. On the same day they awarded, first, that the stock held by the county in a certain railway should be divided in the proportion of one-fifth to be transferred to the city, the remaining four-fifths still to belong to the county; secondly, that the city should pay the county £2,675 on account of the county roads, and should keep such roads in repair within the city limits; thirdly, that the city should pay the county £1,966 in full of its portion of the county debt; fourthly, that in future each of the municipalities should pay the expense of all prisoners committed to the county gaol by each of them respectively, and that the portion of such expense incurred by the city should be paid over by them in

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404. In case, after the lapse of five years from such compensation having been agreed upon or awarded, or having been settled by Act of Parliament, and whether before or after the passing of this Act, it appears reasonable to the Governor-in-Council, upon the application of either party, that the amount of the compensation should be reconsidered, he may, by an order in Council, direct that the then existing arrangement shall cease after a time named in the order, and after such time the Councils shall settle anew, by agreement or by arbitration under this Act, the amount to be paid from the time so named in the order. (*b*) When the amount may be revised.

405. The Council of every City may erect, preserve, improve and provide for the proper keeping of a Court House, Gaol, House of Correction and House of Industry upon lands being the property of the Municipality, and may pass By-laws for all or any of such purposes. (*c*) City Councils may erect Court House, Gaol, House of Correction and House of Industry.

January of each year; fifthly, that in future the city should pay to the county one-third of all incidental expenses connected with the Court-house and gaol, including repairs and insurance, together with one-third of all expenses connected with the administration of justice not paid by Government,—such payment to be made in the month of January in each year; sixthly, that the city should pay to the county the sums mentioned in the first, second and third clauses of the award, with interest, in twelve months from the 1st of January, 1856, except that the City Council should pay its share of the railway stock at the time the county debentures given therefor should become payable; seventhly, that the award should take effect on the 1st January, 1855, and remain in force till the 1st January, 1860. Held, that the giving to the award a retrospective effect—1st January, 1855, being the time when London was declared a city—was not objectionable, but proper; that the arbitrators had authority to give time for payment, as in the sixth clause; that the limiting the continuance of the award till 1st January, 1860, was inconsistent with the 12 Vic. cap. 81, sec. 200 (so far as material the same as sec. 404 of this act), and rendered the award bad as to the fourth and fifth clauses, respecting the Court-house and gaol; that the fourth clause of the award was also bad, because it authorized a ratable division of the expenses, instead of awarding the payment of an annual sum (*sed qu.* under this act); that the fourth and fifth clauses might be separated from the rest, and the award be set aside as to them only. (*In re the matter of the Arbitration between the County of Middlesex and the City of London*, 14 U. C. Q. B. 384.)

(*b*) In other words, after the lapse of five years, the amount of compensation may, if the Governor-in-Council see fit, be reconsidered. If the Governor-in-Council so decide, then the existing arrangement is made to cease after a time named in the order-in-council, in which event the Councils must settle anew, either by agreement or arbitration.

(*c*) This is implied in sec. 402, but, to prevent doubt, is expressly enacted. (See note *s* to sec. 401.)

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Upon separation. Gaol and Court House regulations to continue.

406. In case of a separation of a Union of Counties, all rules and regulations, and all matters and things in any Act of Parliament for the regulation of or relating to Court Houses or Gaols in force at the time of the separation, shall extend to the Court House and Gaol of the junior County. (*d*)

LOCK-UP HOUSES.

Lock-up Houses may be established by County Council.

407. The Council of every County may establish and maintain a Lock-up House or Lock-up Houses within the County, and may establish and provide for the salary or fees to be paid to the Constable to be placed in charge of every such Lock-up House, and may direct the payment of the salary out of the funds of the County. (*e*)

A constable to be placed in charge of.

408. Every Lock-up House shall be placed in the charge of a Constable, specially appointed for that purpose by the Magistrates of the County, at a General Quarter Sessions of the Peace therefor. (*f*)

Who liable to confinement in, &c.

409. Any Justice of the Peace of the County (*g*) may direct, by warrant in writing under his hand and seal, the confinement in a Lock-up House within his County, for a period not exceeding two days, of any person charged on oath with a criminal offence, whom it may be necessary to detain until examined and either dismissed or fully committed for trial to the Common Gaol, and until such person can be conveyed to such Gaol; also the confinement in such Lock-up House, not exceeding twenty four hours, of any person found in a public street or highway in a state of intoxication, or any person convicted of desecrating the Sabbath, and generally may commit to a Lock-up House instead of the Common Gaol

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(*d*) See sec. 51.

(*e*) A "lock-up house" is a place for the temporary confinement of a prisoner, or of a prisoner committed for a short space of time. (Sec. 409.) The gaol is for the whole county, but in each county or union of counties there can be only one gaol, and that situate in the county town. But there may be several lock-up houses, and situate where most convenient. Councils of *counties* only are by this section authorized to establish lock-up houses; but see sec. 412.

(*f*) While the county gaol is to be placed in charge of the gaoler, each lock-up house is to be placed in charge of a constable *specially* appointed for that purpose by Quarter Sessions.

(*g*) *Quære*, or *town*? It is apprehended that after "county" the word "town" should have been inserted. As the clause stands, it may be a question whether a Justice of a town, not being at the same time a Justice of the county, has authority to commit to lock-up houses, pursuant to this section. (See secs. 357, 358, 412.)

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or other house of correction, any person convicted on view of the Justice, or summarily convicted before any Justice or Justices of the Peace of any offence cognizable by him or them, and liable to imprisonment therefor under any statute or municipal by-law. (*h*)

410. The expense of conveying any prisoner to, and of keeping him in a Lock-up House, shall be defrayed in the same manner as the expense of conveying him to and keeping him in the Common Gaol of the County. (*i*)

Expense of conveying and maintaining prisoners.

411. Nothing herein contained shall affect any Lock-up House heretofore lawfully established, but the same shall continue to be a Lock-up House as if established under this Act. (*j*)

Previous Lock-up Houses to continue.

412. The Council of every City, Township, Town and incorporated Village may, by By-laws, establish, maintain and regulate Lock-up Houses for the detention and imprisonment of persons sentenced to imprisonment for not more than ten days under any By-law of the Council; and of persons detained for examination on a charge of having committed any offence; and of persons detained for transmission to any Common Gaol or House of Correction, either for trial or in the execution of any sentence; and such Councils shall have all the powers and authorities conferred on County Councils in relation to Lock-up Houses; two or more local Municipalities may unite to establish and maintain a Lock-up House. (*k*)

Lock-up Houses for persons sentenced to short imprisonment.

(*h*) The following classes of offenders may be committed to lock-up houses:

1. Any person charged on oath with a criminal offence, whom it may be necessary to detain until examined, &c.
2. Any person found in a public street or highway in a state of intoxication.
3. Any person convicted of desecrating the Sabbath.
4. Any person convicted on view, or summarily convicted, of any offence under any statute or municipal by-law.

The duration of imprisonment, it will be observed, varies in regard to the description of the offender or nature of his offence.

(*i*) See note *a* to sec. 379.

(*j*) Let it be observed that this section preserves only lock-up houses *lawfully* established.

(*k*) The persons who may, under the operation of this section, be confined in lock-up houses are the following:

1. Those *sentenced* to imprisonment for not more than ten days, under any by-law of the Council.

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HOUSES OF INDUSTRY AND REFUGE.

County Councils may erect and appoint Inspectors of Houses of Industry.

413. The Council of every County, City or Town separated from a County may acquire an estate in landed property for an Industrial Farm, and shall, within two years after the passing of this Act, establish a House of Industry and a House of Refuge, and provide by By-law for the erection and repair thereof, and for the appointment, payment and duties of Inspectors, Keepers, Matrons and other servants for the superintendence, care and management of such Houses of Industry or Refuge, and in like manner make rules and regulations (not repugnant to law) for the government of the same; (*l*) Provided always, that any two or more United Counties, or any two or more contiguous Counties, having each a population of not more than twenty thousand inhabitants, may agree to have only one House of Industry for such United or contiguous Counties; but whenever such United Counties become separate Municipalities, or the population in any separate County shall exceed twenty thousand inhabitants, then, and in each of such cases, such County shall establish a House of Industry and Refuge within its own limits, and maintain and keep up the same in the manner herein provided. (*m*)

Proviso as to United or contiguous Counties until separated, &c.

Who liable to be committed thereto.

414. Any two of Her Majesty's Justices of the Peace, or of the Inspectors appointed as aforesaid, may, by writing under their hands and seals, commit to the House of Industry, or of Refuge, to be employed and governed according to the rules, regulations and orders of the House:

Indigent.

1. All poor and indigent persons who are incapable of supporting themselves; (*n*)

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2. Those *detained* for examination on a charge of having committed any offence.
3. Those *detained* for transmission to the common gaol or house of correction.

(*l*) The powers under this clause are,

1. To establish a House of Industry and House of Refuge.
2. To provide by by-law for the erection and repair thereof.
3. To provide by by-law for the appointment and duties of inspectors, keepers, matrons and other servants.
4. To make by by-law rules and regulations for the government of the same.

Hitherto the powers were only permissive (Con. Stat U. C. cap. 54, secs. 415–419); but now compulsory, and to be exercised within two years from the passing of the act (15th August, 1866).

As the names indicate, houses of industry and refuge are intended for the poor, the destitute, and the idle. (See sec. 414.)

(*m*) The latter part of this section is new.

(*n*) That is, poor by impotency and defect, as the aged or decrepid,

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2. All persons without means of maintaining themselves, and able of body to work, and who refuse or neglect so to do; (*o*) Idle.

3. All persons leading a lewd, dissolute, or vagrant life, and exercising no ordinary calling or lawful business, sufficient to gain or procure an honest living; (*p*) Lewd.

4. And all such as spend their time and property in public houses, to the neglect of any lawful calling; (*q*) Frequenters of public houses.

5. And idiots. (*r*) Idiots.

415. Every person committed to the House of Industry or of Refuge, if fit and able, shall be kept diligently employed at labour during his continuance there; and in case any such person is idle, and does not perform such reasonable task or labour as may be assigned, or is stubborn, disobedient or disorderly, such person shall be punished according to the rules and regulations of the House of Industry or of Refuge in that behalf. (*s*) Punishment of refractory inmates.

416. The Inspector shall keep an account of the charges of erecting, keeping, upholding and maintaining the House of Industry or Refuge, and of all materials found and furnished therefor, together with the names of the persons received into the House, as well as of those discharged therefrom, and also of the earnings; (*t*) and such account shall be rendered to the Inspectors to keep and render accounts of expenses, &c.

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fatherless and motherless, poor under sickness, and persons lame, blind, &c.

(*o*) That is, the poor, who, though not so by impotency and defect, "refuse or neglect to work."

(*p*) That is, poor by prodigality and debauchery, also called thriftless poor; persons who lead "a lewd, dissolute or vagrant life," &c.

(*q*) That is, persons who, though not necessarily poor, are much the same as persons described in the last note, viz., persons "who spend their time and property in public houses, to the *neglect* of any lawful calling."

(*r*) An idiot or natural fool is one without understanding from his nativity, and therefore is by the law presumed never likely to attain understanding. He differs from a lunatic in this, that a lunatic has lucid intervals of reason. (4 Co. 125; Co. Litt. 247.)

(*s*) It is apprehended that this section is inapplicable to idiots. (See last note.)

(*t*) The duties of Inspectors are, under this section, to keep an account showing the following:

1. The charges for erecting, keeping, upholding and maintaining the House of Industry and Refuge, and of all materials found and furnished therefor.
2. The names of the persons received into the house, as well as those discharged therefrom, and also of the earnings.

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County Council every year, or oftener when required by a by-law of the Council, and a copy thereof shall be presented to each branch of the Legislature. (*u*)

WORK HOUSES.

417. The Council of every City and Town (*v*) may respectively pass By-laws:

Work houses in cities and towns, and houses of correction.

1. For erecting and establishing within the City or Town, or on such Industrial Farm, or on any ground held by the Corporation for public exhibitions, a Work House or House of Correction, and for regulating the government thereof; (*w*)

Who liable to be committed thereto.

2. For committing and sending, with or without hard labour, to the Work House or House of Correction, or to the Industrial Farm, by the Mayor, Recorder, Police Magistrate or two Justices of the Peace for the City or Town respectively, such description of persons as may by the Council be deemed, and by by-law be declared expedient; and such farm or ground held as aforesaid, shall, for the purposes in this sub-section mentioned, be deemed to be within the City or Town and the jurisdiction thereof. (*x*)

THE CARE OF GAOLS AND COURT HOUSES, &c.

Custody of Gaols and Court-houses

418. The Sheriff shall have the care of the County Gaol, Gaol Offices and Yard, and Gaoler's Apartments, and the appointment of the Keepers thereof. (*a*)

(*u*) It is not said *when* the copy is to be presented to the Legislature.

(*v*) The power given to Councils of counties, cities and towns, is, to establish, &c., "houses of industry or refuge;" (sec. 413) and to cities and towns, by the section here annotated, "work houses or houses of correction."

(*w*) The powers are:

1. To erect and establish a Work House, &c.
2. To regulate the government thereof.

(*x*) Work houses or houses of correction are intended to be places of punishment, for the commitment thereto may be "with or without hard labour." The description of persons liable to be so committed, is left to the determination of the Council by by-law.

(*a*) Some disputes having hitherto existed between Sheriffs and Municipal Councils, arising out of a real or supposed conflict of jurisdiction as to court houses and gaols (see *Municipal Council of Huron and Bruce* v. *Macdonald*, 7 U. C. C. P. 280), the object of this and the three following sections is, so far as language can do so, to remove all cause of dispute. Though it is by sec. 401 enacted that the County Council may pass by-laws for erecting, improving, and repairing the gaol, &c., and shall preserve and keep it in repair, and provide the fuel, food, and other supplies required, it is here enacted that the Sheriff shall have the *care* of the gaol, gaol offices and yard, and

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419. The County Council shall have the care of the Court House, and of all offices and rooms connected therewith, whether the same forms a separate building or is connected with the Gaol, and shall have the appointment of the Keepers thereof; and shall from time to time provide all necessary and proper accommodation for the Courts of Justice other than the Division Courts, and for all officers connected with such Courts. (*b*) County Council to appoint keepers, &c.

420. In any City not being a separate County for all purposes, but having a Gaol or Court House separate from the County Gaol or Court House, the care of such City Gaol or Court House shall be regulated by the By-laws of the City Council. (*c*) City Gaols to be regulated by by-law.

FALSE DECLARATIONS.

421. The wilful and corrupt making of any false statement in any declaration required or authorized by this Act, shall be a misdemeanor punishable as wilful and corrupt perjury. (*d*) Wilful false declarations to be perjury

INTERPRETATION CLAUSE.

422. Unless otherwise declared or indicated by the context, whenever any of the following words occur in this Act, the meanings hereinafter expressed attach to the same, namely: (*e*) Interpretation of words

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gaoler's apartments, and the *appointment* of the keepers. While upon the Council rests the responsibility of keeping the building, &c., in repair, and of providing the necessaries, upon the Sheriff rests the responsibility of management and internal government.

(*b*) While the care of the gaol is entrusted to the Sheriff, the care of the Court House is entrusted to the County Council. It is, however, expressly declared that the Council "*shall* from time to time provide all necessary and proper accommodation for the Courts of Justice (other than Division Courts) and for *all officers connected with such Courts.*"

(*c*) Every city is a county of itself for municipal purposes, and for *such* judicial purposes as are in this act specially provided in the case of cities, and no other. (Sec. 356.)

(*d*) It is provided that the word "oath" shall be construed as meaning a solemn affirmation, whenever the context is applied to any person and case by whom and in which a solemn affirmation may be made instead of an oath, &c. (Con Stat. Can. cap. 5, sec. 6, sub-sec. 18); and that the wilful making of any false statement in any such oath or affirmation shall be wilful and corrupt perjury, and that the wilful making of any false statement in any declaration required or authorized by law shall be a misdemeanor, punishable as wilful and corrupt perjury. (*Ib.*)

(*e*) No better mode of avoiding useless repetition in statutes exists than the recent one of appending to statutes of unusual length "an

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Municipality

1. The word "Municipality" means any locality the inhabitants of which are incorporated under this Act, but it does not mean a Police Village;

Council.

2. The word "Council" means the Municipal Council or Provisional Municipal Council, as the case may be;

County.

3. The word "County" means County, Union of Counties, or United Counties, or Provisional County, as the case may be;

Township.

4. The word "Township" means Township, Union of Townships or United Townships, as the case may be;

Land, real estate.

5. The words "Land," "Lands," "Real Estate," "Real Property," respectively, include Lands, Tenements, and Hereditaments, and all rights thereto and interests therein;

Highway, road, &c.

6. The words "Highway," "Road," or "Bridge," mean respectively a Public Highway, Road, or Bridge;

Electors.

7. The word "Electors" means the persons entitled for the time being to vote at Municipal Elections in the Municipality, Ward, or Electoral Division or Police Village, as the case may be;

Reeve.

8. The term "Reeve" includes the Deputy Reeve or Deputy Reeves when there is a Deputy Reeve for the Municipality, except in so far as respects the office of a Justice of the Peace;

Next day.

9. The words "next day" are not to apply to or include Sunday or Statutory Holidays.

CONFIRMING AND SAVING CLAUSES.

Exception from repeal.

423. So much of the Schedules in either of the Municipal Corporations Acts of 1849 and 1850, as define the limits or boundaries of any Cities or Towns, being Schedule B of the Act of 1849, numbers two, three, four, six, seven, eight, nine, ten, and eleven; and Schedule C of the same Act

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interpretation clause." So useful has it been found, that, as applied to statutes generally, an act passed in 1837, intituled "An Act to supply by a general law certain forms of enactment in common use, which may render it unnecessary to repeat the same in acts to be hereafter issued" (7 Wm. IV. cap. 14; Con. Stat. U. C. cap. 2), and in 1849 an act intituled "An Act for putting a legislative interpretation upon certain terms in Acts of Parliament, and for rendering it unnecessary to repeat certain provisions and expressions therein, and for ascertaining the date and commencement thereof, and for other purposes." (12 Vic. cap. 10; Con. Stat. Can. cap. 5.) The section here annotated must, it is apprehended, be read in connection with the Interpretation Acts.

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numbers one, two, and three; and Schedule B of the Act of 1850 numbers one, five, twelve, thirteen, fourteen, and fifteen. And also so much of Schdule D of the said Acts of 1849 and 1850 as relates to Amherstburg; and also so much of the two hundred and third section of the said Act of 1849, and so much of any other sections of either of the said Acts relating to any of the Schedules thereof as have been acted upon or as are in force and remain to be acted upon at the time this Act takes effect; and all Proclamations and Special Statutes by or under which Cities and other Municipalities have been erected, so far as respects the continuing the same and the boundaries thereof, shall continue in force. (*f*)

Further exception.

424. All proceedings on behalf of or against any existing Municipal Corporation or Police Trustees, pending when this Act takes effect, shall be continued under this Act, in the name in which the same are then pending. (*g*)

Pending proceedings to continue.

425. All things lawfully done under former enactments are confirmed, except any matter which has been or within or within one year after the passing of this Act, may be made the subject of proceedings at law or in equity. (*h*)

Past transactions confirmed.

426. All Offences, Neglects, Fines, Penalties, Moneys, Debts, and other matters and things which immediately before this Act goes into effect might have been prosecuted, punished, enforced, or recovered under any former Municipal Act, may be prosecuted, punished, enforced, or recovered under this Act, in the same manner, within the same time, and in the same name and by the same process and proceedings as if the same respectively had been committed or in-

Previous offences, penalties, &c. may be prosecuted and enforced.

(*f*) This section is new. Its meaning is obvious, and its existence essential to the preservation of the territorial and municipal organization of many local municipalities.

(*g*) The act took effect on 1st January, 1867, *except* so much as relates to the nominating of candidates for municipal offices and the framing of by-laws for dividing municipalities, or any ward thereof, in electoral divisions, and appointing returning offices thereto, which took effect on 1st November, 1866, and *except* so much as relates to the qualification of electors and candidates, which will not take effect till 1st September, 1867.

(*h*) This is very important, and intended in a reasonable manner to prevent litigation. This act passed on 15th August, 1866. To question the validity or legality of any thing done under enactments by this act repealed, proceedings must be commenced either at law or in equity within one year after 15th August, 1866. If not so questioned, all things lawfully done are *confirmed*.

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curred or had accrued or become due or payable immediately after the taking effect of this Act. (*i*)

Commencement of this Act, and of certain provisions thereof.

427. This Act shall take effect on the first day of January next (Anno Domini one thousand eight hundred and sixty-seven), save and except so much thereof as relates to the nominating of candidates for Municipal offices, (*j*) and the passing of By-laws for dividing a Municipality or any ward thereof into Electoral Divisions, and appointing Returning Officers therefor, (*k*) which shall come into effect on the first day of November next, (*l*) and also so much thereof as relates to the qualification of electors and candidates, shall not take effect till the first day of September, one thousand eight hundred and sixty-seven. (*m*)

As amended by cap. 52.

Inconsistent enactments repealed.

428. All Acts or parts of Acts inconsistent with the provisions of this Act, relating to the Municipal institutions of Upper Canada, are hereby repealed. (*n*)

Act limited to U. C.

429. This Act shall apply to Upper Canada only. (*o*)

(*i*) The object of this section is to provide against a failure of justice, by reason of offences, &c., committed under the old acts, not being prosecuted before they cease to operate, viz., on the 1st January, 1867. The remedy is to allow all such prosecutions to proceed as if the offences, &c., were committed after 1st January, 1867.

(*j*) See secs. 100, 101.

(*k*) See sec. 278.

(*l*) 1st November, 1866.

(*m*) See secs. 70 to 78, all of which may be held to be more or less affected by this section.

(*n*) On every act professing to repeal or interfere with the provisions of a former act, it is a question of construction whether it operates as a total or partial or temporary repeal. The word "repealed" is not to be taken in an absolute, if it appears upon the whole act to be used in a limited sense. It is presumed that so much of the old act, Con. Stat. U. C. cap. 54, as relates to matters mentioned in the preceding section will continue in force till the corresponding sections of this act take effect. (See Dwarris on Statutes, 534.)

By the repeal of a repealing statute (the new law containing nothing in it that manifests the intention of the Legislature that the former acts shall continue repealed) the original acts are revived; but if an act is repealed by several acts, a repeal of one act or two, and not of all, does not revive the first act. If a repealing act and part of the original act is repealed by a subsequent act, the residue of the original act is revived. If an act of Parliament is revived, all acts explanatory of that act are also revived. It is, however, usual, but not always necessary, when no revival is intended, expressly to provide against the revival. (Harrison's C. L. P. Acts, p. 588.)

(*o*) It is intitled, "An Act respecting the Municipal Institutions of Upper Canada."

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CAP. LII.

AN ACT TO AMEND THE ACT OF THE PRESENT SESSION, INTITULED, "AN ACT RESPECTING THE MUNICIPAL INSTITUTIONS OF UPPER CANADA." (*a*)

[Assented to 15th August, 1866.]

HER MAJESTY, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows: Preamble.

1. The following Proviso is added to the forty-eighth section of the Act passed in the present Session of the Parliament of this Province, intituled, *An Act respecting the Municipal Institutions of Upper Canada:* Proviso added to sec. 48.

"Provided also, that the provision in this section contained shall not apply to any County where proceedings have been commenced or taken, previous to the passing of this Act, for separating such County." (*b*) The proviso.

2. The sub-sections of section sixty-six of the said Act numbered three, four and five, and the sections numbered respectively sixty-seven, seventy-three (except the proviso), seventy-five, eighty-seven, one hundred and seventeen, one hundred and twenty, one hundred and fifty, the first paragraph of three hundred and seventy-one, and section four hundred and twenty-seven, of the said Act, are hereby repealed, and the following sections and sub-sections shall be and are hereby substituted in lieu of the said sections and sub-sections hereby repealed, and shall be taken and read as the said sections and sub-sections of the said Act. (*c*) Certain sections and parts of sections repealed and others substituted.

(*a*) The Editor has, in the text as well as his annotations to the preceding act, termed by him for brevity the Municipal Act, endeavoured to explain that act as amended by this act, which for brevity he terms the Municipal Amendment Act;—so that so far as this act is concerned, nothing more is necessary than references to the particular sections of the Municipal Act where the amendments will be found noted.

(*b*) See note *h* to sec. 48 of the Municipal Act.

(*c*) The Editor has, in the Municipal Act, substituted the sections here intended to be substituted for sections of that act here repealed.

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Sub-sections to Section 66.

3.—In Towns.

New sub-sec. 3, sec. 66.

The Council of every Town shall consist of the Mayor (who shall be the head thereof), and of two Councillors for every Ward; and if the Town has not withdrawn from the jurisdiction of the Council of the County in which it lies, then a Reeve shall be added; and if the Town had the names of five hundred freeholders and householders on the last revised assessment roll, then a Deputy Reeve shall be added; and for every additional five hundred names of persons possessing the same property qualification as voters on such roll, there shall be elected an additional Deputy Reeve. (*d*)

4.—In Incorporated Villages.

New sub-sec. 4, sec. 66.

The Council of every incorporated Village shall consist of one Reeve (who shall be the head thereof) and four Councillors; and if the Village have the names of five hundred freeholders and householders on the last revised assessment roll, then of a Reeve, Deputy Reeve, and three Councillors; and for every additional five hundred names of persons possessing the same property qualification as voters on such roll, there shall be elected an additional Deputy Reeve instead of a Councillor. (*e*)

5.—In Townships.

New sub-sec. 5, sec. 66.

The Council of every Township shall consist of a Reeve (who shall be the head thereof) and four Councillors; and if the Township had the names of five hundred freeholders and householders on the last revised assessment roll, then the Council shall consist of a Reeve, Deputy Reeve, and three Councillors; and for every additional five hundred names of persons possessing the same property qualification as voters on such roll, there shall be elected an additional Deputy Reeve instead of a Councillor. (*f*)

New sec. 67.

67. No Reeve or Deputy Reeve shall take his seat in the County Council, until he has filed with the Clerk of the County Council a certificate under the hand and seal of the Township, Village or Town Clerk, that such Reeve or Deputy Reeve was duly elected, and has made and subscribed the declarations of office and qualification (unless exempted therefrom) as such

(*d*) See sec. 66, sub-sec. 3, of the Municipal Act, and notes thereto.

(*e*) See sec. 66, sub-sec. 4, of the Municipal Act, and notes thereto.

(*f*) See sec. 66, sub-sec. 5, of the Municipal Act, and notes thereto.

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Reeve or Deputy Reeve; nor in case of a Deputy Reeve, until he has also filed with the Clerk of the County an affirmation or declaration of the Clerk or other person having the legal custody of the last revised assessment rolls for the Municipality which he represents, that there appears upon such rolls the names of at least five hundred freeholders and householders in the Municipality for the first Deputy Reeve elected for such Municipality, and that no alteration reducing the limits of the Municipality and the number of persons possessing the same property qualifications as voters, within five hundred for each additional Deputy Reeve, since the said rolls were last revised, has taken place. (*g*)

DISQUALIFICATION.

73. No Judge of any Court of civil jurisdiction, no Gaoler or Keeper of a House of Correction, no Sheriff, Deputy Sheriff, High Bailiff or Chief Constable of any City or Town, Assessor, Collector, Treasurer, Chamberlain, or Clerk of any Municipality, no Bailiff of a Division Court, no Sheriff's Officer, no person not having paid all taxes due by him, no Inn-keeper or Saloon-keeper, and no person having by himself or his partner an interest in any contract with or on behalf of the Corporation, shall be qualified to be a member of the Council of any Municipal Corporation. (*h*) New sec. 73.

75. The electors of every Municipality for which there is an assessment roll, and the electors of every Police Village, shall be the male freeholders thereof, whether resident or not, and such of the householders thereof as have been resident therein for one month next before the election, who are natural born or naturalised subjects of Her Majesty, and of the full age of twenty-one years, and who were severally but not jointly rated on the last revised assessment rolls for real property in the Municipality or Police Village, held in their own right or that of their wives, as proprietors or tenants, and who had paid all Municipal taxes due by them on or before the sixteenth day of December next preceding the election; and such rating shall be absolute and final, and shall not be questioned either by any Returning Officer, or on any application to set aside any election under this Act or any Act respecting the Municipal institutions of Upper Canada. (*i*) New sec. 75.

(*g*) See sec. 67 of the Municipal Act, and notes thereto.
(*h*) See sec. 73 of the Municipal Act, and notes thereto.
(*i*) See sec. 75 of the Municipal Act, and notes thereto.

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New sec. 87.

87. The electors of every City shall elect three Aldermen for every Ward, on the first Monday in January in the year one thousand eight hundred and sixty-seven, one of whom shall retire annually in rotation, and on the first Monday in January in each year thereafter shall elect one Alderman for each Ward, in the room of the retiring member, unless chosen by acclamation on the day of nomination. (*j*)

New sec. 117.

117. The necessary declarations of office and qualification may be administered to the members of the Council and Mayor elect in Cities and Towns by the Clerk thereof.

New sec. 120.

120. In case no return be made for one or more Wards in consequence of non-election, owing to interruption by riot or other cause, the members of Council elect, being at least a majority of the whole members of the Council when full, shall elect one of the Aldermen elect in Cities to be Presiding Officer, at which election the Clerk shall preside, and such officer shall take the necessary declarations and possess all the powers of Mayor, until a poll for such Ward, Wards, or Electoral Division or Divisions has been held under a warrant, in the manner provided for in the one hundred and twenty-fifth section of this Act. (*l*)

New sec. 150.

150. The Warden of a County may resign his office by verbal intimation to the Council while in session, or by letter to the County Clerk if not in session, in which case the Clerk shall notify all the members of the Council, and shall, if required by a majority of the members of the County Council, call a special meeting to fill such vacancy. Vacancies caused by the resignation of a Reeve or a Deputy Reeve shall be filled by an ordinary election, as provided by section one hundred and twenty-five. (*m*)

New first paragraph of sec. 371.

371. All Cities and all Towns having more than five thousand inhabitants shall have a Police Magistrate, and the salaries of such Police Magistrates shall not be less than on the following scale: (*n*)

New section 427.

427. This Act shall take effect on the first day of January next (Anno Domini, one thousand eight hundred and sixty-

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(*j*) See sec. 87 of the Municipal Act, and notes thereto.
(*k*) See sec. 117 of the Municipal Act, and notes thereto.
(*l*) See sec. 120 of the Municipal Act, and notes thereto.
(*m*) See sec. 150 of the Municipal Act, and notes thereto.
(*n*) See sec. 371 of the Municipal Act, and notes thereto.

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seven), save and except so much thereof as relates to the nominating of candidates for municipal offices, and the passing of By-laws for dividing a Municipality or any Ward thereof into Electoral Divisions, and appointing Returning Officers therefor, which shall come into effect on the first day of November next, and also so much thereof as relates to the qualification of electors and candidates shall not take effect till the first day of September, one thousand eight hundred and sixty-seven. (*o*)

Governor may cause extra copies of chapter 51 and of chapter 53 to be printed and distributed incorporating this Act with chapter 51.

3. Forthwith after the passing of this Act, it shall be lawful for the Governor to cause such extra number of copies of the Municipal Act and the Assessment Act to be printed, appending thereto a copious Index to their provisions, as he may deem expedient; and he may cause any Acts or parts of Acts passed during the present session, which amend or affect in any way the provisions of the Municipal Act, to be incorporated with it, inserting them in their proper places in the said Municipal Act, and striking out of the latter any enactments repealed by or inconsistent with those so incorporated; and altering the number of the sections if need be; and a correct printed copy of the said Municipal Act, with the amendments so incorporated, and attested under the signature of the Governor, and countersigned by the Provincial Secretary; and also a similarly attested copy of the Assessment Act passed during the present session, shall be deposited with the Clerk of the Legislative Council; and after such attestation and deposit, copies of the said Municipal Act as amended, and of the said Assessment Act, printed by the Queen's Printer, shall be held and deemed to have the same force and effect as the copies of this Act, and of the Acts amending the same, as passed during the present session; and the Queen's Printer shall distribute the extra copies of the volume containing such Acts and Index, in the proportion of three copies to each Municipality in Upper Canada, and one copy to each member of the Legislative Council and Assembly. (*p*)

Distribution of such copies.

(*o*) See sec. 427 of the Municipal Act, and notes thereto.

(*p*) This is a very unusual provision; but owing to the importance of the acts mentioned, and the peculiar circumstances under which they were passed, the Legislature exercised a wise discretion in making the provision for the distribution of the Acts, together with an Index, which this section authorizes.

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CAP. LIII.

AN ACT TO AMEND AND CONSOLIDATE THE SEVERAL ACTS RESPECTING THE ASSESSMENT OF PROPERTY IN UPPER CANADA. (a)

[Assented to 15th August, 1866.]

Preamble.

HER MAJESTY, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

PRELIMINARY PROVISIONS.

Short Title.

1. This Act may be cited as "The Assessment Act of Upper Canada." (b)

Interpretation clause.

2. In this Act, the word "County," and the word "Township," include a Union of Counties or of Townships, as the case may be, while such Unions continue; The words "County Council," include "Provisional County Council," the word "Town," means "Incorporated Town," and the word "Village," means "Incorporated Village," the word "Ward," does not apply to a Township Ward—and the words "Local Municipality," do not include Counties, unless there is something in the subject or context requiring a different construction. (c)

(a) The consolidation of the several acts relating to the assessment of property in Upper Canada, is second only in importance to the consolidation of the several Municipal acts in 1858, by the Municipal Institutions Act of that year, and its re-enactment in consolidated form as amended. The value of the two acts so far as Upper Canada is concerned, cannot be over estimated. The remarks which the editor made in note *a* in praise of the Municipal act, are equally applicable to the assessment act now under consideration.

(b) The practice of describing acts of Parliament by short titles is of modern invention; but owing to its utility, is becoming each Session of Parliament, of more general application. It is singular that while the Legislature have not, in the case of the Assessment act, been unmindful of this practice, (see secs. 1 & 206) in the Municipal act, they have quite overlooked it. But for convenience no doubt, while one will, under legislative sanction, be known and described as "The Assessment Act of Upper Canada," the other without legislative sanction will be equally well known and as often described as "The Municipal Act of Upper Canada."

(c) See note *e* to sec. 422 of the Municipal Act as to the value of an interpretation clause or interpretation clauses in an act of Parliament.

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3. The terms "Land," "Real Property," and "Real Estate," respectively, include all buildings or other things erected upon or affixed to the land, and all machinery or other things so fixed to any building as to form in law part of the realty, and all trees or underwood growing upon the land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to Her Majesty. (*d*) Meaning of words "Land," &c.

4. The terms "Personal Estate," and "Personal Property," include all goods, chattels, shares in incorporated companies, money, notes, accounts and debts at their full value, income and all other property, except land and real estate and real property as above defined, and except property herein expressly exempted. (*e*) Meaning of "Personal property," &c.

5. The term "property" includes both real and personal property as above defined. (*g*) Meaning of "Property."

6. Unoccupied land owned by a person not resident, and not having a legal domicile or place of business in the Township, Village, Town or City where the same is situate, and who has not signified to the Assessor personally or in writing, Unoccupied land of persons absent how designated.

While in the Municipal Act the interpretation clauses succeed the act, here they precede the act to which they are intended to apply, and in this respect are the more conveniently placed. The interpretation given is not however of universal application; for wherever the context demands a different construction, the latter is to prevail.

(*d*) The Legislature have defined "Land," "Real Property," and "Real Estate," for purposes of taxation as including the following:

1. All buildings or other things erected upon or affixed to the land and machinery or other things so fixed to any building as to form in law part of the realty.
2. All trees or underwood growing upon the land.
3. All mines, minerals, quarries and fossils in and under the same, except mines belonging to Her Majesty. See further note *k* to s. 9.

(*e*) The terms "Personal Estate" and "Personal Property," for purposes of taxation are made to include the following:

1. All goods, chattels, shares in incorporated companies, money, notes, accounts and debts at their full value.
2. Income and all *other* property except land and real estate and real property as above defined, and except property herein expressly exempted. See further note *k* to s. 9.

(*g*) Property is defined as the highest right any man can have to anything, and things may, for the purposes of property, be divided into things real and things personal—the former being such as are permanent and fixed, and the latter such as are moveable and may attend the owner's person wherever he thinks proper to go. (See ss. 3 and 4.)

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that he owns such land and desires to be assessed therefor, shall be denominated "Lands of non-residents." (*h*)

In the case of Railroad Company, &c.

7. The real estate of all Railway Companies is to be considered as lands of residents although the Company may not have an office in the Municipality; except in cases where a Company ceases to exercise its corporate powers, through insolvency, or other cause. (*i*)

PROPERTY LIABLE TO TAXATION.

All taxes to be levied equally upon the ratable property where no other provision made.

8. All municipal, local or direct taxes or rates, shall, when no other express provision has been made in this respect, be levied equally upon the whole ratable property, real and personal, of the Municipality or other locality, according to the assessed value of such property, and not upon any one or more kinds of property in particular or in different proportions. (*j*)

(*h*) Though the owner be a non-resident of the Municipality, yet if he signify to the assessor personally or in writing, that he owns the lands, and desires to be assessed therefor, his name may be placed on the roll, and his land no longer separated from the other assessments (see note *m* to sec. 24). There are, as it were, two assessments —one for residents and such as signify their desire to be assessed, though non-resident, in which case both the lands and the persons are assessed—and the other for non-resident lands, where the lands only and not the persons are assessed. (Secs. 21, 34.)

(*i*) It is the duty of every Railway Company annually to transmit to the Clerk of every Municipality in which any part of the road or other real property of the company is situate, a statement describing:

1. The value of all the real property of the company, other than the roadway.
2. The actual value of the land occupied by the road in the Municipality, according to the average value of land so rated in the roll of the previous year in the locality. (Sec. 33.)

It is then the duty of the Municipal Clerk to communicate the same to the assessor.

It thereupon becomes the duty of the assessor to transmit by post to any station or office of the company, a notice of the total amount at which he has assessed the real property of the company in his Municipality or Ward, distinguishing the value of the land occupied by the road and the value of the other real property of the company. (sec. 38.)

(*j*) The intention is that whenever a council determine to raise a certain sum for a certain purpose within the scope of their authority, the same shall be raised by assessment to be laid equally upon the whole ratable property according to the assessed value of such property, and not upon any one or more kinds of property. (*Doe d. McGill* v. *Langton*, 9 U. C. Q. B. 91.) Where a Municipal Council, instead of following the plain direction of the statute, by by-law imposed a tax on wild lands alone, the by-law was held to be illegal. (*Ib.*) So a by-law imposing an arbitrary rate of 5s. per foot frontage for draining into the common sewers of a city, was held invalid. (*Ex parte Aldwell and the City of Toronto*, 7 U. C. C. P. 104.)

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What property liable to taxation.

9. All land and personal property in Upper Canada shall be liable to taxation, (*k*) subject to the following exemptions, (*l*) that is to say :

EXEMPTIONS.

Exemptions.

All property belonging to Her Majesty.

1. All property vested in or held by Her Majesty, or vested in any public body, or body corporate, officer or person in trust for Her Majesty, or for the public uses of the Province, and also all property vested in or held by Her Majesty, or any other person or body corporate, in trust for or for the use of any tribe or body of Indians, and either unoccupied or occupied by some person in an official capacity; (*m*)

(*k*) The term "land" includes all buildings erected upon or affixed to the land, and all machinery or other things so fixed to any building as in law to form part of the realty, and all trees or underwood growing upon the land, and all mines, minerals, quarries and fossils, in and under the same, except mines belonging to Her Majesty. (Sec. 4.) The term "personal property" includes all goods, chattels, shares in incorporated companies, money, notes, accounts and debts at their full value, income and all other property, except land as above defined and except property in this act expressly exempted. (Sec. 5.) But land covered with the waters of a harbour, is not taxable. (*The Buffalo and Lake Huron Railway Company* v. *The Corporation of the Town of Goderich*, 21 U. C. Q. B. 97.) The pipes of a gas company laid out through the streets of a city, are not to be deemed land, but rather personal property, within the meaning of this section. (*In re Gas Company and the City of Ottawa*, 7 U. C. L. J. 104.) But the interest of the lessees of a road company is in the nature of a chattel interest, and not personal property. (*In re Hepburn and Johnston*, 7 U. C. L.J. 46.) A steamboat is clearly personal property within the meaning of the act. (*In re appeal of Hall*, 7 U. C. L. J. 103.)

(*l*) Where the property though assessed is exempt from assessment and taxation, it is not necessary for the party concerned to appeal under the Assessment Act in order to avail himself of the exemption. That which is exempt cannot be taxed. The fact that it appears on the assessment roll when really exempt, does not make it the less exempt. The unauthorized assessment of that which is by law exempt, cannot make it liable to taxation. (*Shaw* v. *Shaw*, 12 U. C. C. P. 456; see also *The Municipality of the Township of London* v. *The Great Western Railway Company*, 17 U. C. Q. B. 262.)

(*m*) The property exempt by this sub-section is:

1. All property *vested* in *or held by* Her Majesty, or vested in any public body, or body corporate *in trust* for Her Majesty or for the public uses of the Province.
2. All property *vested* in or *held* by Her Majesty or any other person or body corporate *in trust* for or for the use of any tribe or body of Indians, and either unoccupied or occupied by such person in an official capacity.

Property, whether freehold or leasehold, in the use or occupation of the Crown or of any person or persons in his or their official capacity

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But if occupied not officially.

2. When any property mentioned in the preceding sub-section number one, is occupied by any person otherwise than in an official capacity, the occupant shall be assessed in respect thereof, but the property itself shall not be liable; (*n*)

Places of worship, &c.

3. Every place of worship, Church-yard or Burying ground; (*o*)

Public Educational Institutions.

4. The buildings and grounds of and attached to every University, College, incorporated Grammar School, or other incorporated Seminary of learning, whether vested in a Trustee or otherwise, so long as such buildings and grounds are actually used and occupied by such institution, or if unoccupied, but not if otherwise occupied; (*p*)

School House, City Hall, &c.

5. Every Public School-house, Town or City or Township hall, Court-house, Gaol, House of correction, Lock-up House, and public Hospital, with the land attached thereto, and the personal property belonging to each of them; (*q*)

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as servants of the Crown, is not assessable. (*Shaw* v. *Shaw*, 12 U. C. C. P. 456; *The Secretary of War* v. *The Corporation of the City of Toronto*. 22 U. C. Q. B. 551.) So property held by the Crown and not granted, located or leased, so far as the interest of the Crown is concerned (*Street* v. *The Corporation of the County of Kent*, 11 U. C. C. P. 255; see also *Street* v. *The Corporation of the County of Simcoe*, 12 U. C. C. P. 285; S. C. 2 Er. & Ap. 211; *Austin* v. *The Corporation of the County of Simcoe*, 22 U. C. Q. B. 73.)

But the statute does not say that land which has once been legally charged with an assessment, shall become discharged of it when and because it comes into the possession of the Crown. (*The Secretary of War* v. *The Corporation of the City of Toronto*. 22 U. C. Q. B. 551; see also *Lord Colchester et al.* v. *Kewney*, 1 L. R. Ex. 368.)

(*n*) The exemption mentioned in the preceding sub-section as to property vested in or held by Her Majesty, &c., is here qualified by an enactment, that the *occupant* shall be liable to assessment, provided he do not occupy in an official character, but the *property* itself is not to be liable. (Per Draper, C. J., in *Street* v. *The Corporation of the County of Kent*, 11 U. C. C. P. 260.) An assessment of property exempt from assessment would be a nullity, except for the purpose of assessing the occupant individually, under this sub-section. (Per Morrison. J., in *Shaw* v. *Shaw*, 12 U. C. C. P. 459.)

(*o*) All places of worship, all church yards, and all burying grounds, no matter to what denomination of Christians belonging, are here exempt.

(*p*) This is not an absolute, but a qualified exemption, viz., "so long as such building and grounds are unoccupied or actually used and occupied by such institution," but *not* "if otherwise occupied."

(*q*) The Legislature, in using the terms they do in exempting certain buildings, such as court houses, gaols, places of worship and the like, and then exempting the real property of some institutions, and the real *and* personal property of other institutions, must have had in view

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6. Every Public road and way or Public Square; (*r*) Public squares, &c.

7. The property belonging to any County, City, Town, Township or Village, whether occupied for the purposes thereof, or unoccupied; (*s*) Municipal property.

8. The Provincial Penitentiary, and the land attached thereto; (*t*) Provincial Penitentiary

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the nature, object and purposes of these buildings and institutions. Thus:

1. Every place of worship, church yard, or burying ground. (Sub-sec. 3.)
2. Every university, college, incorporated grammar school, or other incorporated seminary of learning, *and* the grounds of and attached thereto, &c. (Sub-sec. 4.)
3. Every public school house, town or city or township hall, court house, gaol, house of correction, lock-up house, and public hospital, *with* the land attached thereto, *and* the personal property belonging to each of them. (Sub-sec. 5.)
4. Every industrial farm, poor house, alms house, orphan asylum, house of industry and lunatic asylum, and every house belonging to a company for the reformation of offenders, *and* the real *and* personal property belonging to or connected with the same. (Sub-sec. 9.)

The Legislature, it will be observed, does not exempt all hospitals, but only *public* hospitals. Lord Coke says, in *Sutton's case* (10 Rep. 31 a), that there is no legal hospital except where the poor persons benefited are themselves incorporated; and he says that where the corporate succession is vested in trustees, to effectuate the purposes of the institution, there is no legal hospital. It seems, however, tolerably clear that a legal hospital in *that* sense is not meant where the words "public hospital" are used in this section. It is more reasonable to hold that the words are used in their popular sense, and that any institution which, though not in a strictly legal, might in a popular sense be called a public hospital, can claim exemption. (See *Lord Colchester et al.* v. *Kenney*, 1 L. R. Ex. 368; *In re Appeal of Sisters of Charity of the City of Ottawa*, 7 U.C.L.J. 157.)

(*r*) Public squares are as much public property as public roads and ways, and cannot, without a breach of trust, be applied to any use inconsistent with the purpose of their dedication. All such are made exempt from taxation, probably for the reason that, not being the exclusive property of any individual in the community, there could be no person whose exclusive obligation it would be to pay taxes. Private squares or private roads or ways do not enjoy immunity from taxation.

(*s*) There could be no object in the Council of any county, city, town, township or village, levying taxes on its own property. Hence all such, whether occupied for the purposes thereof or unoccupied, are exempt. But it is not said that the occupants thereof, when occupied for purposes of gain, shall be exempt from taxation.

(*t*) The Penitentiary, erected near the city of Kingston, in the county of Frontenac, is called "*The* Provincial Penitentiary of Canada," and is the institution here intended. (Con. Stat. Can. cap. 111.) The land attached thereto is also exempt.

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Houses, &c., used for philanthropic purposes.

9. Every Industrial Farm, Poor House, Alms House, Orphan Asylum, House of Industry, and Lunatic Asylum, and every house belonging to a Company for the reformation of offenders, and the real and personal property belonging to or connected with the same; (*u*)

Scientific Institutions, &c.

10. The property of every Public Library, Mechanics' Institution, and other public, literary or scientific institution, and of every Agricultural or Horticultural society, if actually occupied by such society; (*v*)

Personal property of Governor.

11. The personal property and official income of the Governor of the Province; (*w*)

Imperial Military or Naval pay, salaries, pensions, &c., property of officers on full pay.

12. The full or half pay of any one in any of Her Majesty's Naval or Military services, or any pension, salary, gratuity or stipend derived by any person from Her Majesty's Imperial Treasury or elsewhere out of this Province, and the personal property of any person in such Naval or Military services on full pay, or otherwise in actual service; (*x*)

Pensions under $200.

13. All pensions of two hundred dollars a year and under, payable out of the public moneys of this Province; (*y*)

Income of farmers.

14. The income of a farmer derived from his farm; (*z*)

(*u*) The institutions here mentioned are all of a charitable character, and therefore, we find the Legislature, with as much liberality as possible, exempt not only the institutions themselves, but the "real *and* personal property belonging to or connected with the same."

(*v*) The property of every public library, mechanics' institute, and other public literary or scientific institution, appears, in favour of literature and science, to be absolutely exempt; but the property of an agricultural or horticultural society appears to be only conditionally exempt, *i. e.*, "if actually occupied by such society."

(*w*) This exemption rests upon grounds of state policy, between the Imperial and Colonial authorities.

(*x*) The exemptions here are:

1. The full or half pay of any one in *any* of Her Majesty's naval or military services.
2. The personal property of any person in such naval or military services on full pay, or otherwise in actual service.
3. Any pension, salary, gratuity or stipend, derived by any person from Her Majesty's Imperial treasury or elsewhere out of this Province.

(*y*) While all pensions derived by any person from Her Majesty's Imperial treasury or elsewhere out of the Province are by the preceding sub-section exempt, none but pensions of two hundred dollars a year or under, payable out of the public money of the Province, are here made exempt.

(*z*) This is a liberal exemption, made in favour of agriculture. The income of a farmer, no matter how great, if derived from his farm, is exempt.

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15. So much of the personal property of any person, as is secured by a mortgage upon land or is due to him on account of the sale of land the fee or freehold of which is vested in him, or is secured by the debentures of the Province or of any Municipal Corporation thereof; (*a*) Personal property secured by mortgage, or municipal debentures.

16. The stock held by any person in any chartered bank, so long as there is a Special Tax on bank issues; (*b*) Bank stock, so long, &c.

17. The stock held by any person in any Railroad Company; (*c*) Railroad stock.

18. All property, real or personal, which is owned out of this Province; (*d*) Property owned out of the Province

19. So much of the personal property of any person, as is equal to the just debts owed by him, except such debts as are secured by mortgage upon his real estate or may be unpaid on account of the purchase money therefor; (*e*) Personal property to amount of debts due.

(*a*) Personal property is in general subject to taxation. The exemption here made is as to so much of the personal property of any person as is,

1. Secured by a mortgage upon land, or is due to him on account of the sale of land, the fee or freehold of which is vested in him.
2. Secured by the debentures of the Province, or of any Municipal Corporation thereof.

The reason of the first is, that the land itself, on which the mortgage security rests, is subject to taxes; and the second rests on fiscal considerations, the object being to create a bonus in favor of Government or Municipal debentures, so as to induce persons having money to invest, to invest in debentures, and so keep up as much as possible the price thereof.

(*b*) Stockholders in a chartered Bank, when there is a tax on Bank issues, in effect pay that tax; and this, without the addition of a municipal tax on their stock, is deemed a sufficient burden.

(*c*) Stock in the railway companies of Canada, so far as mere investment is concerned, has been found anything but profitable; and for this reason, no doubt, the exemption is here created.

(*d*) Personal property out of the Province may be subject to taxes wherever situate, and, if taxed in this Province because the owner happens to live here, might subject him to double taxation.

(*e*) If what a man owes be equal to or exceed his personal property, the latter is exempt from taxation, provided his debts are not secured by mortgage or real estate, or unpaid on account of the purchase money therefor. So much of the personal property of any person as is secured by a mortgage upon land, or is due to him on account of the sale of land, is exempt (sub-sec. 15); and this is because the land, or rather the owner of it, is compelled to pay taxes thereon without reference to the incumbrances. Hence the proviso in the sub-section here annotated.

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Personality under $100.

20. The net personal property of any person, provided the same be under one hundred dollars in value; (*f*)

Income under $300.

21. The annual income of any person, provided the same does not exceed three hundred dollars; (*g*)

Minister's salary under $1200.

22. The stipend or salary of any minister of religion; (*h*)

Official salaries at seat of Government.

23. The annual official salaries of the officers and servants of the several Departments of the Executive Government and of the two Houses of Parliament resident at the seat of Government; (*i*)

Household effects, books &c.

24. Household effects of whatever kind, books and wearing apparel. (*j*)

HOW RATES TO BE ESTIMATED.

How rates shall be calculated.

10. In Counties, Cities, Towns, Townships, and Villages, the rates shall be calculated at so much in the dollar upon

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(*f*) The debts owing by a man (not secured by mortgage, &c.) (sub-sec. 19), are to be deducted from the value of his personal property. The balance is his "net personal property." If the latter be under one hundred dollars in value, it is exempt; if that sum or more, it is subject to taxation according to graduated scale. (Sec. 35.)

(*g*) Certain incomes are privileged from taxation. Thus: the income of the Governor-General (sub-sec. 11); the full or half pay of persons in Her Majesty's naval or military services (sub-sec. 12;; so much of incomes as may consist of pensions, salaries, gratuities or stipends derived by any person from Her Majesty's Imperial treasury or elsewhere out of the Province (*Ib.*); all Provincial pensions of two hundred dollars or under (sub-sec. 13); so much of income as is secured by a mortgage on land, or due on account of the sale of land (sub-sec. 15); the income of a farmer, derived from his farm (sub-sec. 14); the stipend or salary of any minister of religion (sub-sec. 22); the annual official salaries of the officers and servants of the several departments of the Executive Government, and of the two Houses of Parliament resident at the seat of Government (sub-sec. 23); and here the annual income of every person whose income does not exceed three hundred dollars.

(*h*) Ministers of religion are not in general over-paid in Upper Canada, and the Legislature have here made a wise concession to relieve them of income tax. The marginal note it will be observed is incorrect and is probably inadvertently copied from the old act.

(*i*) It will be observed that the exemption is only made in favor of such officers and servants of the Executive or of Parliament, as are "resident at the seat of Government."

(*j*) The bed and bedding and bedsteads in ordinary use by a debtor and his family, as well as the necessary wearing apparel of himself and family, together with certain specified articles of furniture and food, are also exempt from seizure and sale under execution. (Stat. 28 Vic. cap. 25, sec. 4.)

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the actual value of all the real and personal property liable to assessment therein. (*k*)

Priority of existing debentures; how rates for paying them shall be calculated.

11. All Debentures heretofore issued by Municipal Corporations under any By-law, and based upon the yearly value of ratable property, at the time of passing such By-law, shall hold the order of priority which they now occupy, (*l*) and each Municipal Corporation (having so issued Debentures) shall levy a rate on the actual real value of the ratable property within the Municipality represented, sufficient to produce a sum equal to that leviable or produced on the yearly value of such property as established by the Assessment Roll for the year one thousand eight hundred and sixty-six; (*m*) and such rates shall be applied solely to the payment of such Debentures, or interest on such Debentures, according to the terms of the By-law under which they are issued; (*n*)

To be applied solely for such purposes.

Rate for Sinking Fund.

2. In cases where a Sinking Fund is required to be provided, either by the investment of a specific rate or amount, or on a rate on the increase in value over a certain sum, then such a rate shall be levied as shall, at least, equal the sum originally intended to be set apart. (*o*)

Rate of half cent per dollar for paying debt to Consolidated Municipal Loan Fund.

12. In order to comply with the provisions of the Consolidated Municipal Loan Fund Act (Consolidated Statutes of Canada, chapter eighty-three), a rate of not less than one-third of a cent in the dollar upon the actual value of all ratable property, shall be levied by all Municipalities in Upper Canada indebted to the Municipal Loan Fund, unless a smaller rate

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(*k*) The distinction formerly existing between actual value and yearly value no longer exists. While in counties and townships the rates were calculated at so much in the dollar on actual value, in cities, towns, and villages it was calculated on yearly value. There is now no difference in this respect between counties, cities, towns, townships, and villages: in all alike the rate is to be calculated on actual value. A tax of so much an acre arbitrarily without reference to actual value, was held bad under the old law. (*Doe d. McGill* v. *Langton*, 9 U. C. Q. B. 91.) The court refused on an application for a mandamus to decide as to the proper principle to be applied in the valuation of property for purposes of taxation. (*In re Dickson and the Municipal Council of the Village of Galt*, 10 U. C. Q. B. 395.)

(*l*) See note *k* to sec. 10.

(*m*) The rate must be sufficient for the purpose intended. If clearly insufficient, the court might, on application, quash the by-law. (*Perry* v. *The Town Council of the Town of Whitby*, 13 U. C. Q. B. 564.)

(*n*) An application of the money produced by the rate to any other purpose than that specified, would be a breach of trust.

(*o*) See notes to sub-sec. 5 of sec. 256 of the Municipal Act.

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Proviso; if such rate be insufficient.

would produce eight per cent. upon the capital of the loans (*p*) Provided always, that if such rate of one-third of a cent in the dollar upon the actual value of ratable property, according to the assessment of any year, shall produce a less sum than five cents in the dollar on the annual value of the property in the year one thousand eight hundred and fifty-eight, such a rate shall be levied as will produce a sum equal to that produced by a rate of five cents in the dollar on the assessment rolls of the year one thousand eight hundred and fifty-eight. (*q*)

Estimates to be made yearly.

13. The Council of every Municipality shall, every year, make estimates of all sums which may be required for the lawful purposes of the County, City, Town, Township, or Village, for the year in which such sums are required to be levied, each local Municipality making due allowance for the cost of collection and of the abatement and losses which may occur in the collection of the tax, and for taxes on the lands of non-residents which may not be collected. (*r*)

(*p*) In case the Receiver-General certify to the Governor-General that any municipality is in default to the Municipal Loan Fund, the Governor-General may issue his warrant to the Sheriff, directing him to seize all goods and chattels, lands and tenements, and other property and things liable to be seized in execution, belonging to such municipality, and to sell the same, or so much thereof as may be necessary to produce the amount for which such municipality is in default, and costs, as he would under execution against such municipality, and to pay the proceeds to the Receiver-General, in liquidation of the amount. (Con. Stat. Can. cap. 83, sec. 68.)

(*q*) A sum equal to five cents in the dollar on the assessed yearly value, or a like per centage on the interest at six per cent. per annum on the assessed value of all the assessable property in every municipality indebted to the Municipal Loan Fund, must be raised every year unless and until the amount of principal and interest payable by such municipality to the Receiver-General, shall have been paid and satisfied. (*Ib.* sec. 88.)

(*r*) In making yearly estimates of the sums required, it will be necessary for the Council to make due allowance in respect of the following:

1. The cost of collection.
2. Abatement and losses which may occur in the collection.
3. Taxes on lands of non-residents that may not be collected.

and accordingly have a margin sufficient to cover drawbacks arising from any or all of the foregoing causes.

It does not appear necessary that the Council should set forth in the by-law the estimates on which it is founded (*Fletcher* v. *The Municipality of the Township of Euphrasia*, 13 U. C. Q. B. 129) and the Court will, in the absence of evidence to the contrary, intend that proper estimates have been made. (*Ib.*)

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14. The Council of every Municipality may pass one By-law, or several By-laws authorizing the levying and collecting of a rate or rates of so much in the dollar upon the assessed value of the property therein, as the Council deem sufficient to raise the sums required on such estimates. (*s*)

Bylaws for raising money by rate.

15. If the amount collected falls short of the sums required the Council may direct the deficiency to be made up from any unappropriated fund belonging to the Municipality. (*t*)

If the amount collected falls short.

16. If there be no unappropriated fund, the deficiency may be equally deducted from the sums estimated as required, or from any one or more of them. (*u*)

Or estimates may be reduced proportionably

17. If the sums collected exceed the estimates, the balance shall form part of the General Fund of the Municipality, and be at the disposal of the Council, unless otherwise specially appropriated; (*v*) but if any portion of the amount in excess has been collected on account of a special tax upon any particular locality, the amount in excess collected on account of such special tax shall be appropriated to the special local object. (*w*)

If sums collected exceed estimates, appropriation of the balance.

18. The taxes or rates imposed or levied for any year shall be considered to have been imposed and to be due on and from the first day of January of the then current year and ending

Yearly taxes to be computed from 1st January, unless otherwise ordered.

(*s*) It is not incumbent on a Municipal Council to raise all that is required, and no more than is required, by one by-law. Were this the law, it would be impossible, owing to contingencies such as mentioned in sec. 13, and other contingencies of a like kind, for any Municipal Council to comply with it. The amount collected may either fall short or exceed the sum required. If short, the deficiency may be made up from any unappropriated fund belonging to the Municipality. (Sec. 15.) If no unappropriated fund, the deficiency may be equally deducted from the sums estimated or from any one or more of them (sec. 16) or a second by-law passed, under the section here annotated. (Sec. 14.) If an excess, the surplus becomes a part of the General Fund of the Municipality, unless otherwise appropriated. (Sec. 17.)

(*t*) See note *s* to sec. 14.

(*u*) See note *s* to sec. 14.

(*v*) See note *s* to sec. 14.

(*w*) The preceding sections, secs. 14, 15, 16, as well as the first part of this section (17) relate more particularly to general estimates for general purposes. If any portion of the amount in excess has been collected on account of a Special Tax upon any particular locality, the general rule is not to apply—the amount collected shall, instead of forming part of the General Fund, be appropriated to the special local object and no other.

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with the thirty-first day of December thereof, unless otherwise expressly provided for by the enactment or By-law under which the same are directed to be levied. (*a*)

ASSESSORS AND COLLECTORS.

Assessors and Collectors to be appointed.

19. The Council of every Municipality, except Counties, shall appoint such number of Assessors and Collectors for the Municipality as they deem necessary. (*b*)

Municipality may be divided into Assessment Districts.

20. And they may appoint to each Assessor and Collector the Assessment District or Districts therein, within which he shall act, and may prescribe regulations for governing them in the performance of their duties. (*c*)

HOW ASSESSMENTS TO BE PROCEEDED WITH.

Assessment Roll to be prepared, its form, contents, &c.

21. The Assessor or Assessors shall prepare an Assessment Roll, (*d*) in which, after diligent enquiry, he or

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(*a*) This section is intended to fix the fiscal year for all the Municipalities, for the purposes of rates and taxes, and may be looked upon as providing that no matter in what part of the year a by-law imposing rates and taxes may be passed, the taxes shall be considered as imposed for the whole current year. (See *Ford* v. *Proudfoot*, 9 Grant, 478; *Corbett* v. *Taylor*, 23 U. C. Q. B. 454; see also *Mellish* v. *The Town Council of the Town of Brantford*, 2 U. C. C. P. 35, and note *k* to sec. 111, of this act.)

(*b*) See sec. 164 of the Municipal Act and notes thereto.

(*c*) See sec. 164 of the Municipal Act and notes thereto.

(*d*) The assessment, as respects real property, is the mode provided for ascertaining the actual value thereof. Unless followed by the imposition of a rate, it creates no liability. None of the methods pointed out by the statute for collecting and enforcing payment of a rate can apply until a rate has been actually imposed. (*Corbett* v. *Taylor*, 23 U. C. Q. B. 454.) But the assessment roll, when completed, is the foundation of all proceedings with a view to elections or taxation, and all copies and lists ought to correspond with it, for it is the primary or original roll. (Per Adam Wilson, J., in *Laughtenborough* v. *McLean*, 14 U. C. C. P. 180.) But while this is so, there is no provision whatever declaring it to be an offence to add to or alter such a roll. (Municipal Act, sec. 188, and notes thereto.) It is the alteration of or interference with subsequent documents or papers, made, prepared or drawn out from it, according to or for the purpose of meeting the requirements of the law in regard to municipal elections, which is made criminal. (*Ib.*) An assessor is not bound to enquire into the trusts upon which lands are held, but to view each man's premises, and to find out whether or not he is assessable, or whether or not he comes under any of the exemptions allowed by law (*Franchon* v. *The Corporation of St. Thomas*, 7 U. C. L. J. 245); and a person improperly assessed as owner, and served with notice of the assessment, may, by omitting to appeal, make himself liable as owner. (*McCarrall* v. *Watkins et al.*, 19 U. C. Q. B. 248.)

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they shall set down, according to the best information to be had: (*e*)

1. The names and surnames in full, if the same can be ascertained, in alphabetical order, of all taxable persons resident in the Municipality who have taxable property therein, or in the District for which the Assessor has been appointed; (*f*) Names of residents.

2. And of all non-resident Freeholders who have, in writing, required the Assessor to enter their names and the land owned by them in the Roll; (*g*) and Of non-residents.

(*e*) The duty of an assessor is, under this section, twofold:

1. To make diligent inquiry for the information suggested.
2. To set the results down according to the best information to be had.

If any assessor *refuse* or *neglect* to perform any duty required of him by this act, he shall, upon conviction thereof before the Recorder's Court of the city, or before the Court of General Quarter Sessions of the county in which he is assessor, forfeit to Her Majesty such sum as the court shall order and adjudge, not exceeding one hundred dollars. (Sec. 176.) If he make an *unjust* or *fraudulent* assessment, or wilfully and fraudulently enter on the roll the name of any person who should not be entered thereon, or indeed *wilfully* omits any duty required of him by this act, he shall be guilty of a misdemeanor; and upon conviction thereof before a Court of competent jurisdiction, shall be liable to a fine not exceeding two hundred dollars, and to imprisonment till the fine be paid, *or* to imprisonment in the common gaol of the county or city for a period not exceeding six months, *or* to both; such fine and imprisonment in the discretion of the court. (Sec. 178.) An assessor convicted of having made any unjust or fraudulent assessment, shall be sentenced to the greatest punishment, both of fine and imprisonment, allowed by this act. (Sec. 180.) Proof, to the satisfaction of the jury, that any real property was assessed by the assessor at an actual value greater or less than its true actual value by thirty per centum thereof, shall be *primâ facie* evidence that the assessment was unjust or fraudulent. (Sec. 179.) Both real and personal property should be estimated by assessors at their actual cash value, as they would be appraised in payment of a just debt from a solvent debtor. (Sec. 30.)

(*f*) "Taxable persons" may be either residents or "non-residents," who have requested their names to be entered on the roll. The names and surnames, *in full*, of all such (if the same can be ascertained) should be entered on the roll, and that in alphabetical order. There cannot be too much particularity in this respect. The roll is, as it were, a judgment roll—the highest evidence of a debt recoverable by process of a most summary character. Even the description of persons on the roll as executors or trustees, does not absolve them from personal liability for taxes, or save their own goods from distress for taxes. (*Dennison* v. *Henry*, 17 U. C. Q. B. 276.) Persons assessed in a representative character, as trustee, guardian, executor or administrator, should, however, be assessed as such, with the addition to the name of the representative character. (Sec. 45.)

(*g*) A non-resident owner of land can only be assessed in his own name when he makes the request to be so assessed. (*Municipality of Berlin* v. *Grange*, 5 U. C. C. P. 211.)

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Property.

3. The description and extent or amount of property assessable against each; (*h*)

Further particulars.

4. And such particulars, in separate columns, as follows: (*i*)

Column 1.—The successive number on the roll;

Column 2.—Name of taxable party;

Column 3.—Occupation.

Column 4.—To state whether the party is a Freeholder or Tenant by affixing the letter "F" or the letter "T," as the case may be;

Column 5.—The age of the assessed party;

Column 6.—Name and address of the owner, where the party assessed is a tenant only;

Column 7.—Number of Concession, name of Street or other designation of the local division in which the real property lies;

Column 8.—Number of Lot, House, &c., in such division;

Column 9.—Number of Acres or other measures, shewing the extent of the property;

Column 10.—Number of acres cleared;

Column 11.—Value of each parcel of real property;

Column 12.—Amount of taxable income;

Column 13.—Value of personal property;

(*h*) The assessor should so set down the description *and* extent or amount of property assessable against each taxable person. If land, it should be assessed as granted, as subsequently divided, or as actually owned by the party taxable. If the person taxable be the owner of several lots, the lots should be as much as possible kept distinct, and not unnecessarily thrown together. (See note *q* to sec. 139.) Where the property is held by the taxable party in the character of a trustee or executor, he may be so described. (Sec. 45.)

(*i*) These particulars are required under several acts of Parliament, and several clauses of the same act of Parliament, with a view to the imposition of taxes; statistical information, &c. (See, among others, statutes 27 Vic. cap. 2, sec. 6; 27 Vic. cap. 19, sec. 2; 29 Vic. cap. 39, secs. 2, 3, 4.) The information should be diligently obtained, and when obtained carefully entered on the roll. So much, for weal or woe, depends on the state of the roll, that the greatest care should be used in the selection of competent persons to fill the office of assessor; and these persons, when appointed, should use the greatest diligence and accuracy in the performance of their duties. A slovenly assessment is often the forerunner of expensive litigation, and is at all times and under all circumstances a source of trouble and annoyance to all concerned. The rights of electors and their interests as rate-payers may alike be jeopardized by carelessness or ignorance in those to whom the law entrusts the discharge of most important duties. (See *McCarrall* v. *Watkins et al.*, 19 U. C. Q. B. 248.)

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Column 14.—Total value and amount of real and personal property and taxable income;

Column 15.—Number of persons in the family of each person rated as a resident;

Column 16.—Number of cattle;

Column 17.—Number of sheep;

Column 18.—Number of hogs;

Column 19.—Number of horses;

Column 20.—Dogs;

Column 21.—Bitches;

Column 22.—To be headed "First-class Service Militia Roll;"

Column 23.—"Second-class Service Militia Roll;"

Column 24.—"Reserve Militia Roll."

Land to be assessed in the Municipality or Ward.

22. Land shall be assessed in the Municipality in which the same lies, and in the case of Cities and Towns, in the Ward in which the properties lies, and this shall include the land of incorporated Companies as well as other property; (*j*) and when any business is carried on by a person or persons in two or more Municipalities, the personal property belonging to such person or persons shall be assessed in the Municipality in which such personal property is situated. (*k*)

Personal property.

When land to be assessed in owner's name.

23. Land occupied by the owner shall be assessed in his name. (*l*)

(*j*) See note *k* to sec. 9.

(*k*) Personal property of a person having a shop, factory, office, or other place of business, must, as a rule, be assessed at the place of business. (Sec. 40.) If several places of business in different municipalities, then according to this section, at the place or places where situate (sec. 22) for that portion of personal property connected with the business carried on at each. (Sec. 41.) If no place of business, then at the place of residence. (Sec. 42.)

(*l*) The word "owner" is here used as a word of a very wide signification. The assessor has nothing to do with the title or trust upon which land is held. Upon seeing land occupied by an apparent owner, the assessor is bound to assess the occupant for it, no matter upon what trust the freehold of the land is held (see *Dennison* v. *Henry*, 17 U. C. Q. B. 276; *Franchon* v. *The Corporation of St. Thomas*, 7 U. C. L. J. 245); and if the person assessed as owner be served with notice of the assessment, and omit to appeal against it, he will, it would seem, whether owner or not, render himself liable for taxes as owner. (*McCarrall* v. *Watkins*, 19 U. C. Q. B. 248.)

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If land not occupied by the owner, but owner is known.

24. As to land not occupied by the owner, but of which the owner is known, and who, at the time of the assessment being made, resides or has a legal domicile or place of business in the Municipality, or who has signified by writing to the Assessor that he owns the land and desires to be assessed therefor, the same shall be assessed against such owner alone if the land is unoccupied, or against the owner and occupant if such occupant be any other person than the owner. (*m*)

If owner non-resident and unknown.

25. If the owner of the land be not resident, then if the land is occupied, it shall be assessed in the name of and against the occupant and owner, but if the land be not occupied, and the owner has not requested to be assessed therefor, then it shall be assessed as land of a non-resident. (*n*)

If land assessed against

26. When land is assessed against both the owner and occupant, (*o*) the Assessor shall place both names within

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(*m*) The owner, if not an occupant, can only be assessed in his own name, under the circumstances mentioned:

1. Where the owner is known, *and* resides or has a legal domicile or place of business *in* the municipality.
2. Where, though not a resident of the municipality, he has signified in writing that he owns the land and desires to be assessed therefor.

A non-resident owner of land can only be properly assessed in his own name, when he makes the request here mentioned. (*Municipality of Berlin* v. *Grange*, 5 U. C. C. P. 228; S. C. 1 Er. & Ap. 279.) But if a non-resident be rated as a resident, it by no means follows that the assessment is nugatory. (*DeBlaquiere et al.* v. *Becker et al.*, 8 U. C. C. P. 167.) Where the name appears on the roll, the law will presume, till the contrary be proved, that the name was put on the roll at his request. (Per Richards, J., in *Municipality of Berlin* v. *Grange*, 5 U.C. C. P. 228; *sed qu.*, per Draper, C. J., in same case, 1 Er. & Ap. 289.) It is the duty of the assessor, when notified by a non-resident freeholder of his desire to be on the roll, to put his name on the roll, and enter opposite to it, in a column for the purpose, the letters "N. R." and the address of such freeholder. (Sec. 29.)

(*n*) The meaning of this section is not free from doubt. If land be occupied no doubt it should be assessed in the name of the occupant. If unoccupied and owned by a person living in the Municipality where he is owner, it may be assessed in his name. But if unoccupied and owned by a non-resident, it can only be assessed in his name on his request in writing. (See note *m* to sec. 24.) This section provides that if the land be occupied "it shall be assessed in the name of and against the occupant *and* owner." The question is whether this is to be done where the owner is a non-resident of the Municipality and has not requested his name to be entered on the roll. The language of the section is broad enough to cover all owners, whether resident within or without the Municipality.

(*o*) See sec. 25.

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brackets on the Roll, and shall write opposite the name of the owner the letter F, and opposite the name of the occupant the letter T, and both names shall be numbered on the Roll; (*p*) provided always that no rate-payer shall be counted more than once in returns and lists required by law for municipal purposes; and the taxes may be recovered from either or from any future owner or occupant, saving his recourse against any other person. (*q*)

owner and occupant, taxes may be recovered from either or any future owner or occupant.

27. When the land is owned or occupied by more persons than one, and all their names are given to the Assessor, they shall be assessed therefor in the proportions belonging respectively to each, (*r*) and if a portion of the land so situated is owned by parties who are non-resident, and who have not required their names to be entered on the roll, the whole of the property shall be assessed in the names given to the Assessor, saving the recourse of the persons whose names are so given against the others. (*s*)

If land occupied by more owners than one.

28. Any occupant may deduct from his rent any taxes paid by him, if the same could also have been recovered from the owner, unless there be a special agreement between the occupant and the owner to the contrary. (*t*)

When tenants may deduct taxes from rent.

(*p*) The omission to follow this direction does not invalidate the assessment. (See *DeBlaquiere et al.* v. *Becker et al.* 8 U. C. C. P. 16.)

(*q*) The obligation of the landlord is *primâ facie* to pay taxes. (See sec. 28.) If the tenant agree to pay taxes, the obligation is shifted as between them. But in regard to the Municipality, taxes may be recovered from either, and not only so, but from "any future owner or occupant" saving his recourse against any other person. (See *Smith* v. *Shaw*, 8 U. C. L. J. 297; *Holcomb et al.* v. *Shaw*, 22 U. C. Q. B. 92; *Warne* v. *Coulter*, 25 U. C. Q. B. 177.)

(*r*) Where on an assessment roll under the general heading "Names of taxable parties," were entered the names of Ker, William and Henry for two separate parcels of land, and in the proper columns were the letter "F" and "H," and in the columns headed "Owners and address" opposite to the parcels of land "Wm Ker & Bros." it was held that Wm. Ker and Henry Ker, and not "Wm. Ker & Bros." were the persons in whose names the properties were rated. (*The Queen ex rel. McGregor* v. *Ker*, 7 U. C. L. J. 67.)

(*s*) See note *q* to sec. 26.

(*t*) A lessee of a house in a city cannot be assessed as an occupant when he no longer occupies, although his term still continues. (*McCarrell* v. *Watkins et al.* 19 U. C. Q. B. 248.) But if assessed as owner, by omitting to appeal, he may be held liable as owner for the purposes of assessment. (*Ib.*) The right of an occupant to deduct taxes from rent is given, if the taxes could have been in the first instance recovered from the owner. If between the owner and the occupant there be a

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Assessors to note non-residents, if required, on the roll.

29. The Assessor shall write opposite the name of any non-resident Freeholder who requires his name to be entered on the Roll, (*u*) in the Column No. 3, the letters "N. R." and the address of such Freeholder. (*v*)

Property to be estimated at full value.

30. Real and personal property shall be estimated at their actual cash value as they would be appraised in payment of a just debt from a solvent debtor. (*a*)

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special agreement to the contrary, of course there will not be the right to deduct taxes from rent. Where defendant took a written agreement for a lease of certain premises, which lease was silent as to taxes, but when it was signed, verbally agreed to pay them, but no lease was ever executed, owing to a disagreement on another point, and defendant occupied the premises for four years, paying taxes for three years without objection. When sued for rent subsequently accrued, he claims to set off the taxes, on the ground that as the agreement made no provision for them and could not be added to by verbal evidence, they must fall on the landlord. But held that having voluntarily made the payments in pursuance of his own agreement, even if it were without consideration, he could not recover back or set off such payment. (*McAvaney* v. *Tisdall*, 28 U. C. Q. B. 499.) It is not said in the act when, or from quarter or month, the occupant may deduct the taxes from his rent, and under a similar enactment in England it was held that a tenant could not occupy for several years paying taxes and claim to deduct from his last quarter's rent the whole amount of taxes paid by him during the term (*Stubbs* v. *Parsons*, 3 B. & A. 516), and our act has in one case received a similar construction. (*Wade* v. *Thompson et al.* 8 U. C. L. J. 22.) An ordinary lease under the words in the statute containing a covenant "to pay taxes," covers a special rate created by a corporation by-law as well as other taxes. (*In re Michie and the Corporation of the City of Toronto*, 11 U. C. C. P. 379.)

(*u*) A non-resident freeholder cannot be assessed in his own name, unless upon his own request in writing. (See note *m* to sec. 24.)

(*v*) The omission of this direction will not, it is apprehended, invalidate the assessment. (*De Blaquiere et al.* v. *Becker et al.*, 8 U. C. C. P. 167.)

(*a*) There is nothing that men so much differ about as the value of property. It is, to a great extent, a matter of opinion. Men's opinions on such a subject are very materially affected, more so than they are perhaps aware of, by the point from which they consider it. A man who is impressed with a consideration of how much a thing is worth, will entertain a widely different opinion from him who simply looks at it as a thing to be purchased in expectation of profit whether by the employment of it or selling it again. (Per Draper, C. J., in *McCuaig* v. *The Unity Fire Insurance Company*, 9 U. C. C. P. 88.) Perhaps, after all, the best standard of value is that mentioned in this section—"actual cash value," such as the property would be appraised "in payment of a just debt from a solvent debtor". (See further note *s* to sec. 179.) But it is no defence to an action for taxes, that the property was excessively rated. (*The Municipality of London* v. *The Great Western Railway Company*, 17 U. C. Q. B. 267.) The only remedy in such a case is by appeal to the Court of Revision. (*Ib.*)

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31. In assessing vacant ground or ground used as a farm, garden or nursery, and not in immediate demand for building purposes in Cities, Towns or Villages, whether incorporated or not, the value of such vacant or other ground shall be that at which sales of it can be freely made; and where no sales can be reasonably expected during the current year, the assessors shall value such land as though it was held for farming or gardening purposes, with such per centage added thereto as the situation of the land may reasonably call for, (*b*) and such vacant lands, though surveyed into building lots, if unsold as such, may be entered on the assessment roll as so many acres of the original block or lot, describing the same by the description of the block or by the number of the lot and concession of the Township in which the same may have been situated, as the case may be; (*c*) Provided that in such case the number and description of each lot comprising each such block shall be inserted on the Assessment Roll, and each lot shall be liable for a proportionate share as to value, and the amount of the taxes if the property is sold for arrears of taxes. (*d*)

What shall be deemed vacant land, and how its value shall be calculated in cities, &c.

Proviso.

32. When ground is not held for the purposes of sale, but *bona fide* inclosed and used in connection with a residence or building as a paddock, park, lawn, garden or pleasure ground, it shall be assessed therewith at a valuation which at six per centum would yield a sum equal to the annual rental, which in the judgment of the Assessors it is fairly and reasonably worth for the purposes for which it is used, reference being always had to its position and local advantages. (*e*)

When not held for sale, but for gardens, &c.

(*b*) This section in effect divides vacant land into two classes. One class consists of lands of which sales can be reasonably expected during the current year; the other class, of lands of which no sales can be reasonably expected during the current year. Between the two, there must be a difference of value, and a difference in the mode of assessment. The first is to be valued at the price at which sales can be freely made; the second is to be valued as though held for gardening or farming purposes, with such per centage added thereto as the situation of the land may reasonably call for. Any construction of the act which confounds these two classes abrogates the one or other class, and, if the second, is an evasion of the statute. (See remarks in 9 U. C. L. J. 232.)

(*c*) *i. e.*, the second class in the last note mentioned.

(*d*) This is essential for the preservation of the relation of the lots to each other, so as properly to adjust the burden of taxation in the event of the sale of some portion for taxes.

(*e*) The preceding section provides for the assessment of vacant land, or land used as a farm, garden or nursery, and not in immediate demand for building purposes. This section applies to land not held for purposes of sale, but *bona fide* inclosed and used as a paddock, park, lawn,

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Railway Companies to transmit annual statements describing value of their real property to Clerk of municipality and shall be notified of the amount at which they are assessed.

33. Every Railway Company shall annually transmit to the Clerk of every Municipality in which any part of the road or other real property of the Company is situate, a statement describing the value of all the real property of the Company, other than the roadway, and also the actual value of land occupied by the road in the Municipality, according to the average value of land as rated on the roll for the previous year in the locality, and the Clerk shall communicate the same to the Assessor; and the Assessor shall deliver at or transmit by post to any station or office of the Company, a notice of the total amount at which he has assessed the real property of the Company in his Municipality or Ward, distinguishing the value of the land occupied by the road, and the value of the other real property of the Company, (*ee*) and the statement

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garden or pleasure ground, used in connection with a residence or building; in which case the valuation is to be, not as for purposes of sale, but for the purpose for which the land is used, reference being had to its position and local advantages. This is to be done by assessing such land, with the residence or building, at a valuation which, at six per cent. per annum, would yield a sum equal to the annual rental which, in the judgment of the assessors, it is fairly and reasonably worth.

(*ee*) Duties are here thrown upon the Railway Company, the Clerk of the Municipality, and the Assessor.

The Railway Company must annually transmit to the Clerk of every municipality in which any part of the road or other real property of the Company is situate, a statement describing,

1. The value of all the real property of the Company, other than the roadway.
2. The actual value of land occupied by the road in the municipality, according to the average value of land as rated on the roll for the previous year in the locality.

The Clerk must communicate the foregoing notice to the Assessor.

The Assessor must deliver at, or transmit by post to, any station or office of the Company, a notice of the total amount at which he has assessed the real property of the Company in his municipality or ward, distinguishing the value of the land occupied by the road, and the value of the other real property of the Company.

It is only the land occupied by the road (not the superstructure) that is liable to assessment (*The Great Western Railway Company* v. *Rouse*, 15 U. C. Q. B. 168); and where the assessors illegally assessed the superstructure of a railway as well as the land occupied by it, it was held that the Company might defend an action as to the superstructure, although no appeal had been made to the Court of Revision, and although the whole was called land in the assessment. (*The Municipality of the Township of London* v. *The Great Western Railway Company*, 17 U. C. Q. B, 262.)

The assessment of the land must be according to the average value of land in the locality. (*Great Western Railway Company* v. *Forman*, 8 U. C. C. P. 221.)

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shall be held to be the statement required by the forty-sixth section, and the notice required by the forty-ninth section of this Act. (*f*)

NON RESIDENT LANDS.

Land of non-residents, how to be designated and described on the Assessment Roll.

34. As regards the lands of non-residents, who have not required their names to be entered by the Assessor, (*g*) the Assessors shall proceed as follows:

1. They shall insert such land in the Roll, separated from the other assessments, and shall head the same as "Non-residents' Land Assessments;" (*h*)

2. If the land be not known to be sub-divided into lots, it shall be designated by its boundaries or other intelligible description; (*i*)

If the land be known to be sub-divided into lots.

3. If it be known to be sub-divided into lots, or be part of a tract known to be so sub-divided, the Assessors shall designate the whole tract in the manner prescribed with regard to undivided tracts and if they can obtain correct information of the sub-divisions they shall put down in the Roll, and in a first column, all the unoccupied lots, by their numbers and names alone and without the names of the owners, beginning at the lowest number and proceeding in numerical order to the highest; in a second column, and opposite to the number of each lot they shall set down the quantity of land therein liable to taxation; in a third column, and opposite to the quantity, they shall set down the value of such quantity, and if such quantity be a full lot it shall be sufficiently designated as such by its name or number, but if it be part of a lot, the part shall be designated in some other way whereby it may be known. (*j*)

The statement from the Railway Company to the Municipality need not be in any particular form (*Ib.*); and the delivery of the statement by the assessor to the Company, of the amount at which he has assessed the real property of the Company, is necessary to enable the Company, if dissatisfied, to appeal, and essential to the binding effect of the assessment itself. (*The Municipality of the Township of London* v. *The Great Western Railway Company*, 16 U. C. Q. B. 500.)

(*f*) See secs. 46 and 49, and notes thereto.

(*g*) See note *m* to sec. 24.

(*h*) One roll is all that is now required. In the case of non-residents who have not required their names to be entered on the roll, the land only will be assessed "separated from the other assessments," under the head "Non-residents' Land Assessments."

(*i*) If the land be known to be sub-divided into lots, the sub-divisions should be entered in the roll. (Sub-sec. 3.) But if not known to be so sub-divided, the land must be designated by its boundaries or other intelligible description.

(*j*) Three columns are here made necessary on the non-resident lands part of the roll, showing:

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MANNER OF ASSESSING PERSONAL PROPERTY.

Assessment scale for personal property.

35. If the net value of the personal property of any person is equal to any of the sums set down in the first column of the following scales, but is not equal to the larger sums set opposite to it in the second column, he shall be assessed for the smaller sum only: (*k*)

$100	or more,	but under	$200
$200	do.	do.	$400
$400	do.	do.	$1,000
$1,000	do.	do.	$2,000
$2,000	do.	do.	$4,000
$4,000	do.	do.	$10,000
$10,000	do.	do.	$20,000
$20,000	do.	do,	$40,000
$40,000	do.	do.	$60,000
$60,000	do.	do.	$80,000

and so forward, the sums thenceforth increasing by $20,000.

How persons deriving income from any trade or profession shall be assessed.

36. No person deriving an income exceeding three hundred dollars per annum from any trade, calling, office, profession, or other source whatsoever, (*l*) not declared exempt by this Act, (*m*) shall be assessed for a less sum as the amount of his net personal property than the amount of such income during the

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1. All unoccupied lots by their numbers and names alone, without the names of the owners, beginning at the lowest number and proceeding in numerical order to the highest.
2. The quantity of land in each lot liable to taxation.
3. The value of such quantity.

If the quantity be a full lot, it shall be designated as such by its name or number. If a part of a lot, the part shall be designated in some other way whereby it may be known.

It must be borne in mind that the real estate of all railway companies is to be considered as the land of residents, although the company may not have an office in the municipality. (Sec. 7.)

(*k*) As to the meaning of "net personal property" or "net value of personal property," see note *f* to sub-sec. 20 of sec. 9 of this Act. No person deriving an income exceeding $300 per annum from any trade, calling, office, profession or other source whatsoever, is to assessed for a less sum as the amount of his net personal property. (Sec. 36.) But personal property under $100, is exempt from taxation. (Sec. 9, sub-sec. 20.) So are annual incomes of $300 and under. (Sec. 9, sub-sec. 21.)

(*l*) Annual incomes of $300 and under are exempt from taxation. (Sec. 9, sub-sec. 21.)

(*m*) The income of a farmer derived from his farm, is exempt. (Sec. 9, sub-sec. 14.) So the stipend or salary of any minister of religion (sec. 9, sub-sec. 22) the official income of the Governor General (sec. 9, sub-sec. 11) the annual official salaries of the officers and servants of

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year then last past, but no deduction shall be made from the gross amount of such income, by reason of any indebtedness save such as shall equal the annual interest thereof, and such last year's income shall be held to be his net personal property, unless he has other personal property to a greater amount. (*n*)

Personal property of a Corporate Company not to be assessed.

37. The personal property of an Incorporated Company shall not be assessed against the Corporation, but each Shareholder shall be assessed for the value of the stock or shares held by him, as part of his personal property, unless such stock is exempted by this Act; (*o*) Provided always, that in Companies investing their means in Gas-Works, Water-works, Plank and Gravel Roads, Manufactories, Hotels, Railways and Tram Roads, Harbours or other works requiring the investment of the whole or principal part of the stock in real estate already assessed for the purpose of carrying on such business, the shareholders shall only be assessed on the income derived from such investment. (*p*)

Proviso: as to certain Companies.

Personal property of partnerships how and where to be assessed.

38. The personal property of a partnership shall be assessed against the firm at the usual place of business of the partnership, and a partner in his individual capacity shall not be assessable for his share of any personal property of the partnership which has already been assessed against the firm. (*q*)

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the several departments of the Executive Government and of the two Houses of Parliament resident at the Seat of Government (sec. 9, sub-sec. 23) and certain pensions from the Home and Canadian Governments. (Sec. 9, sub-secs. 12, 13.)

(*n*) Net personal property is personal property, less certain debts (note *f* to sub-sec. 20 of sec. 9.) No one is to be assessed for a less sum as the amount of his net personal property than the amount of his income during the past year, and this without deduction by reason of any indebtedness "save such as shall equal the annual interest thereof." It is in another place provided that no abatement shall be made from the amount of income on account of debts due. (Sec. 61, sub-sec. 12.) The latter will probably be held to be the law.

(*o*) The stock held by any person in any chartered bank, so long as there is a special tax on bank issue (sec. 9, sub-sec. 16) and the stock held by any person in any railway company (sec. 9, sub-sec. 17) are exempt.

(*p*) Where there is real estate belonging to a company such as mentioned, the real estate is subject to taxation, and this being so it is only fair to assess a shareholder therein on the income, if any, derived from his investment.

(*q*) A steamboat is clearly personal property within the meaning of this section (*In re Hatt*, 7 U. C. L. J. 103) and is properly assessable at

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As to partnerships having more than one business locality.

39. If a partnership has more than one place of business, each branch shall be assessed, as far as may be, in the locality where it is situate, for that portion of the personal property of the partnership which belongs to that particular branch; (*r*) and if this cannot be done, the partnership may elect at which of its places of business it will be assessed for the whole personal property, and shall be required to produce a certificate at each of the other places of business, of the amount of personal property assessed against it elsewhere. (*rr*)

Where parties carrying on trade or business shall be assessed for personal property.

40. Every person having a Farm, Shop, Factory, Office or other place of business, where he carries on a trade, profession or calling, shall for all personal property owned by him, wheresoever situate, be assessed in the Township, Village or Ward where he has such place of business at the time when the assessment is made. (*s*)

If the party has two or more places of business.

41. If he has two or more such places of business in different Municipalities or Wards, he shall be assessed at each for that portion of his personal property connected with the

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one of the two places between which in summer it plied and at which all winter it was laid up. (*Ib.*) Where the whole of the partnership property is assessed at one place, no partner is there liable to be assessed for his share of the partnership property. But where the partnership has more than one branch of business, each branch shall be assessed in the locality where situate. (Sec. 39.)

(*r*) A steamboat is a species of personal property which can only be assessed as a whole, and although the boat may ply between two points in different counties, its business is not to be understood as consisting of several branches within the meaning of this section. (*In re Hatt*, 7 U. C. L. J. 103.)

(*rr*) If there can be an assessment at each of the branches, such assessment is to be made. And it is only when this cannot be done that the partnership may elect at which of its places of business it will be assessed for the whole personal property.

(*s*) If a person having personal property have no place of business, he shall be assessed at his place of residence. (Sec. 42.) The act requires that every person shall be assessed for personal property either at his place of business or place of residence. And if the persons assessed in respect of personal property had neither place of business nor place of residence within the municipality at the time of the assessment, the assessment cannot be upheld. (*In re Cartwright and the Corporation of the City of Kingston*, 6 U. C. L. J. 189; *In re Hepburn and Johnston*, 7 U. C. L. J. 46; *In re Yarwood*, 7 U. C. L. J. 47; *In re Ashworth*, 7 U. C. L. J. 47; *Marr* v. *The Corporation of the Village of Vienna*, 10 U. C. L. J. 275.) But if business be carried on by a person in two or more municipalities, his personal property must be assessed where it is situate (sec. 22), or at each place for that portion of his personal property connected with the business carried on thereat. (Sec. 41.)

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business carried on thereat, (*t*) or if this cannot be done, he shall be assessed for part of his personal property at one and part at another of his places of business, but he shall in all such cases produce a certificate at each place of business of the amount of personal property assessed against him elsewhere. (*u*)

If the party has no place of business.

42. If any person has no place of business he shall be assessed at his place of residence. (*v*)

In case of executors, &c.

43. Personal property in the sole possession or under the sole control of any person as trustee, guardian, executor, or administrator, shall be assessed against such person alone. (*w*)

Separate assessment of joint owners or possessors.

44. In case of personal property owned or possessed by or under the control of more than one person resident in the Municipality or Ward, each shall be assessed for his share only; or if they hold in a representative character, then each shall be assessed for an equal portion only (*x*)

Parties assessed as trustees, &c.,

45. When a person is assessed as Trustee, Guardian, Executor, or Administrator, he shall be assessed as such with

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(*t*) It is provided by sec. 22 of this act that when any business is carried on by a person in two or more municipalities, the personal property belonging to such person shall be assessed in the municipality in which the personal property is situate. Here it is provided that under like circumstances the person assessable shall be assessed at each for that portion of his personal property connected with the business carried on thereat.

(*u*) Where an assessment cannot be made for a portion of the personal property connected with each branch, then the assessment shall be for one part at one, and part at another of his places of business.

(*v*) Business or residence in a municipality seems to be the governing point in the assessment of personal property. (Note *s* to sec. 40.) It is not necessary here to inquire into the reason for placing the assessment of personal property in the municipalities in Upper Canada on such a footing. It is possible, however, that the Legislature intended to place non-residents on a more favourable footing than residents in this respect, with a view of encouraging foreign capital into the Province, and as an inducement to non-residents to invest their money in public companies formed for local improvements and otherwise. (*In re Cartwright and the Corporation of the City of Kingston*, 6 U. C. L. J. 189.)

(*w*) And his own goods and chattels, in all probability, held liable for the payment of the taxes. (See *Denison* v. *Henry*, 17 U. C. Q. B. 276.) The name of the *cestui que trust*, infant, or legatee, need not in any manner appear on the roll.

(*x*) This is the rule as nearly as possible made applicable to partnerships having several places of business. (See sec. 39.)

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to have their representative character attached to their names.

the addition to his name of his representative character, (*a*) and such assessment shall be carried out in a separate line from his individual assessment, and he shall be assessed for the value of the real and personal estate held by him, whether in his individual name or in conjunction with others in such representative character, at the full value thereof, or for the proper proportion thereof, if others resident within the same Municipality be joined with him in such representative character. (*b*)

Particulars respecting real property to be delivered to assessors in writing by the parties to be assessed.

46. It shall be the duty of every person assessable for real property in any local Municipality, (*c*) to give all necessary information to the Assessors, and if required by the Assessor or by one of the Assessors if there be more than one, he shall deliver to him a statement in writing, signed by such person (or by his agent, if the person himself be absent), containing all the particulars respecting the real property assessable against such person which are required in the Assessment Roll; (*d*)

Further information.

and if any reasonable doubt be entertained by the Assessor of the correctness of any information given by the party applied to, the Assessor shall require from him such written statement. (*e*)

Statements given by parties not binding on assessors.

47. No such statement shall bind the Assessor, nor excuse him from making due enquiry to ascertain its correctness; and notwithstanding the statement, the Assessor may assess such person for such amount of real property, as he believes to be just and correct, and may omit his name or any property which he claims to own or occupy, if the Assessor has reason to believe that he is not entitled to be placed on the Roll, or to be assessed for such property. (*f*)

(*a*) An administrator, though assessed in his own name for real property, is not entitled to qualify as a member of a Municipal Council on such real estate. (*The Queen ex rel. Stock* v. *Davis*, 3 U. C. L. J, 128.)

(*b*) And though persons be rated in a representative capacity, it seems that their own goods may be distrained for the taxes. (*Denison* v. *Henry*, 17 U. C. Q. B. 276.)

(*c*) This section would not apply where the person is assessable for personal property only.

(*d*) It is, under all circumstances, made the duty of the person assessable to give all necessary information to the assessors. But it is only his duty to deliver a statement when required by the assessor or assessors.

(*e*) No such statement, however, binds the assessor (sec. 47), nor does it excuse him from making due enquiry to ascertain its correctness.

(*f*) The assessor has a duty to perform, which is to prepare the the roll, "after diligent enquiry." (Sec. 21.) The statement in the

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48. In case any person fails to deliver to the Assessor the written statement mentioned in the preceding sections when required so to do, or knowingly states anything falsely in the written statement required to be made as aforesaid, such person shall, on complaint of the Assessor, and upon conviction before a Justice of the Peace having jurisdiction within the County wherein the Municipality is situate, forfeit and pay a fine of twenty dollars, to be recovered in like manner as other penalties upon summary conviction before a Justice of the Peace. (*g*) Penalty for not giving statement or making false statement.

49. Every Assessor, before the completion of his Roll, shall leave for every party named thereon, and resident or domiciled, or having a place of busines within the City, Town, Village or Township, and shall transmit by post to every non-resident who shall have required his name to be entered thereon, and furnished his address to the Assessor, a notice of the sum at which his real and personal property has been assessed, according to schedule A. (*h*) Assessors to give notice to parties of the value at which their properties are assessed.

50. The Assessors shall make and complete their Rolls in every year between the first day of February, and such day, not later than the fifteenth day of April, as the Council of the Municipality appoints, (*i*) and shall attach thereto a certificate At what time the assessment roll shall be completed.

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preceding section mentioned is intended as an aid to him, but not as an excuse for indolence. He is bound to make due enquiry to ascertain its correctness; and he may then assess the person for such amount of real property as he believes to be just and correct, or wholly omit the name of the person from the roll if not entitled to a place on it, or to be assessed for such property.

(*g*) The penalty of twenty dollars may be enforced in case of:—

1. Failure to deliver the written statement when requiredby the assessor.
2. Knowingly stating therein anything false.

The penalty may be recovered "on complaint of the assessor."

(*h*) The object of this notice is to enable the person for whom intended, if dissatisfied with the sum at which his real and personal property has been assessed, to appeal therefrom. Considered in this light, it is of great importance that it should be left or transmitted by post (as the case may be), according to the direction of the statute. If neglected, it would seem that the Municipal Corporation would not be in a position to enforce payment of the taxes, either by distress or action. (*The Municipality of the Township of London* v. *The Great Western Railway Company*, 16 U. C. Q. B. 500.)

(*i*) The duty of the assessors is to make *and* complete their rolls within the time limited for the purpose. It is of the utmost importance that public officers should fulfil their duties by the times limited in the

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signed by them respectively, and verified upon oath or affirmation, in the form following: (*j*)

Certificate to be attached to roll.

"I do certify that I have set down in the above Assessment Roll all the real property liable to taxation, situate in the Township, Village *or* Ward of (*as the case may be*) and the true actual value thereof in each case, according to the best of my information and judgment; and also that the said Assessment Roll contains a true statement of the aggregate amount of the personal property, or of the taxable income, of every party named in the said Roll; and that I have estimated and set down the same according to the best of my information and belief; and I farther certify that I have entered therein the names of all the resident householders and freeholders, and of all other freeholders who have required their names to be entered thereon, with the true amount of property occupied or owned by each, and that I have not entered the name of any person whom I do not truly believe to be a householder, tenant or freeholder, or the *bona fide* occupier or owner of the property set down opposite his name, for his own use and benefit."

Assessment roll to be delivered up

51. Every Assessor shall deliver to the Clerk of the Municipality the Assessment Roll completed and added up,

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act for the performance thereof. The whole machinery of municipal government assumes that certain things are done by certain days in the municipal year, so that other things may in their order follow. Municipal officers cannot, therefore regard provisions as to time with too much strictness. Neglect to do so is penal (sec. 176), and wilful omission is visited with severe consequences. (Sec. 179.) But if the thing required to be done within the time limited be not done, it does not follow that it cannot afterwards be done. It is, no doubt, important that it should be done within the time limited; but it is still more important that it *should be done;* and therefore if, owing to some uncontrollable circumstances, it is not done on the proper day, it ought, it is to be presumed, to be done on the next or some other day. (Per Pollock, C. B., in *Hunt* v. *Hibbs*, 5 H. & N. 126.) So far as the public interests are concerned, the act may be looked upon as directory. (*The King* v. *The Mayor of Norwich*, 1 B. & Ad. 310; *The Queen* v. *The Mayor of Rochester*, 5 El. & B. 710.) But so far as the officers whose duty it is made to do the things within a limited time, the act may be construed as imperative. (*Hunt* v. *Hibbs*, 5 H. & N. 126.)

(*j*) Not only is the thing to be done within a time limited, *i. e.*, "between the first day of February and such day, not later than the fifteenth day of April, as the Council of the Municipality appoints," but in a particular manner "certified and verified upon oath or affirmation in the form given." Neglect of any duty required of an assessor subjects him to criminal prosecution. (See note *i.*) When certified and verified as directed, it is the duty of the assessor to deliver the roll to the Clerk of the Municipality. (Sec. 51.)

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with the certificates and affidavits attached;(*k*) and the Clerk shall thereupon file the same in his office, and the same shall, at all convenient office hours, be open to the inspection of all the Householders and Freeholders resident or owning property in the Municipality. (*l*)

To Clerk of municipality

To be open to inspection

COURT OF REVISION AND APPEALS.

52. If the Council of the Municipality consists of not more than five members such five members shall be the Court of Revision for the Municipality. (*m*)

If Council contain five members only.

53. If the Council consists of more than five members, such Council shall appoint five of its members to be the Court of Revision. (*n*)

If of more than five.

(*k*) See sec. 50 and notes thereto.

(*l*) One object of the delivery of the roll to the Clerk, so far as this section is concerned, is that the same may be filed and open to the inspection of all the householders and freeholders resident or owning property in the Municipality. This is in order to enable the persons designated for themselves and of themselves to examine the roll, and if not found correct to appeal against the same in the manner directed and within the time limited for the purpose. (Sec. 61.)

(*m*) All courts are bounded and circumscribed by certain laws and stated rules, to which in all their proceedings and determinations they must square themselves. (Bacon's Abridgment, Courts, D. 1.) So inferior courts—such as Courts of Revision—are bounded in their original creation to matters within the jurisdiction for which they were created. (*Ib.* D. 4.) The jurisdiction of Courts of Revision is to "try all complaints in regard to persons being wrongfully placed upon or omitted from the roll, or being assessed at too high or too low a sum." (Sec. 59.) Power is given to the court to summon witnesses, and to administer oaths to witnesses before giving their evidence. (Secs. 57,58.) It is the duty of the court when a person appeals against an assessment, to decide the complaint either one way or the other. (*The Law Society of Upper Canada* v. *The Corporation of the City of Toronto*, 25 U. C. Q. B. 199.) Abstaining from decision is no determination of the matter of appeal. (Per Draper, C. J., *Ib.*) The person appealing is entitled to a decision on his appeal before he can be made liable to pay any taxes in respect of the assessment against which he appeals. Until decided, the assessment is, as it were, withdrawn from the assessment roll. (*Ib.* per Morrison, J.) Some *act* of the court would, it seems, be necessary before a decision could be said to be given. (*Ib*) The dismissal of an application upon the making of it might be held a sufficient decision for the purposes of the act. (*In re Judge of the County Court of the County of Perth*, 12 U. C. C. P. 252.) All decisions should be made, and duties of the court in respect thereof performed, before 1st of June in each year. (Sec. 60.) But under special circumstances there may be appeals at other times —sometimes to the Court and sometimes to the Council. (See secs. 63, 65, and 124.)

(*n*) Township Councils consist only of five members (Municipal

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Three to be a quorum.

54. Three members of the Court of Revision shall be a quorum, and a majority of a quorum shall decide all questions before the Court. (*o*)

The Clerk, who to be.

55. The Clerk of the Municipality shall be Clerk of the Court, and shall record the proceedings thereof. (*p*)

Court may meet and adjourn from time to time at pleasure.

56. The Court may meet and adjourn, from time to time, at pleasure, or may be summoned to meet at any time by the Head of the Municipality. (*q*)

The court may administer oaths and summon witnesses.

57. The Court, or some member thereof, shall administer an oath to any party or witness before his evidence can be taken, and may issue a summons to any witness to attend such Court. (*r*)

Penalty on witnesses who refuse to attend.

58. If any Witness so summoned fails to attend (having been tendered compensation for his time at the rate of fifty cents a day), he shall incur a penalty not exceeding twenty dollars, to be recoverable, with costs, by and to the use of the Municipality, in any way in which penalties incurred under any By-law thereof may be recovered. (*s*)

Act, sec. 66, sub-sec. 5); but councils of other corporations may or may not have a greater number of members according to circumstances. (*Ib.* sec. 66, sub-secs. 1, 2, 3, and 4.) If only of five members, then such five constitute the Court of Revision. (Sec. 52.) If of more than five members, the Council must appoint five of its members to be the Court of Revision. (Sec. 53.) The number five is convenient, and three forms a quorum. (Sec. 54.)

(*o*) The court is made to consist of five members. (Secs. 52, 53.) But all need not be present. Three form a quorum, and "a majority of a quorum" may decide all questions before the court. So that if there be only three present, and of these one dissenting, two may decide all questions before the court.

(*p*) All the duties as Clerk of the Court are not here detailed. No doubt he would be subject to regulations made for his guidance by the court. But his principal duty is to record the proceedings of the court, and that duty is here expressed. He would not have power to administer an oath to a witness. (Sec. 57.)

(*q*) The power to adjourn is an implied power of every court. If adjourned *sine die*, it may be summoned to meet by the Head of the Municipality.

(*r*) A witness cannot be compelled to attend unless when summoned, paid, or tendered compensation, at the rate of fifty cents per day, (Sec. 58.) If he attend, the oath must be administered to him by the court or some member thereof. (Sec. 57.) The clerk does not appear to have power to administer the oath.

(*s*) The duty of a witness when summoned is to attend court. But that duty is not made compulsory unless when summoned he be paid

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59. At the times or time appointed the Court shall meet and try all complaints in regard to persons being wrongfully placed upon or omitted from the roll, or being assessed at too high or too low a sum. (*t*)

The Court to try complaints of wrongful assessment, &c.

60. All the duties of the Court of Revision which relate to the matters aforesaid, shall be completed and the Rolls finally revised by the Court before the first day of June in every year. (*u*)

The Court to finish its business by the 1st June.

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at the rate of fifty cents a day. This is intended as compensation for his time. When this has been done he is bound to attend, or submit to a penalty "not exceeding twenty dollars."

(*t*) The statutory jurisdiction of the court is here conferred. The court cannot exceed it. (See note *m* to sec. 52.) It is one with a limited authority created for particular purposes, viz., to try all complaints in regard to persons—

1. Wrongfully placed upon the roll.
2. Unlawfully omitted from the roll.
3. Assessed at too high a sum.
4. Assessed at too low a sum.

(*u*) So far as the court is concerned, this section would appear to be imperative. But so far as the public is concerned, it may be held to be only directory. (See note *i* to sec. 50.) Where an act is required to be done for the public good, and there has been a wrongful omission to do it, and a serious inconvenience will arise from its not being done, a superior court of law has the power of ordering it to be done under the prerogative writ of mandamus. (Per Lord Campbell, C. J., in *The Queen* v. *The Mayor and Assessors of Rochester*, 7 El. & B. 924.) Of this we have a well known instance in *The King* v. *Sparrow*, 2 Str. 1123, where Overseers of the Poor not having been appointed for a parish as the statute requires, "in Easter week or within one month after Easter," a mandamus was granted after the expiration of that time to Justices to appoint Overseers of the Parish, and the appointment having been made was adjudged to be valid. This decision has been frequently recognized and acted upon. There can be no doubt that for the public good, and to effectuate the intention of the Legislature, the revision, though the 1st June have passed without it, ought still to take place. The proper course would probably be to apply for a mandamus to the head of the Council to summon a Court to meet, under the authority given him by sec. 56, with a view to hear and determine the matters complained of, due notices being first given to the respective parties. (Per Morrison, J., in *The Queen* v. *The Court of Revision of Cornwall*, 25 U. C. Q. B. 292.) Possibly the writ might be directed to the Court, or members composing it; for though not a corporation, they constitute, as it were, a standing and perpetual tribunal within the municipality. (Per Lord Campbell, C. J., in *The Queen* v. *The Mayor and Assessors of Rochester*, 7 El. & B. 925.) The court may, at its option, after the first of June, receive and decide upon the petition from any person assessed for a tenement which has remained vacant during more than three months in the year for which the assessment has been made, or from any per

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Course of proceeding in the trial of complaints

61. The proceedings for the trial of complaints shall be as follows: (*a*)

Notice of complaint by party aggrieved.

1. Any person complaining of an error or omission in regard to himself, as having been wrongfully inserted on or omitted from the Roll, or as having been undercharged or overcharged by the Assessor in the Roll, may, personally or by his agent, within fourteen days after the time fixed for the return of the Roll, give notice in writing to the Clerk of the Municipality, that he considers himself aggrieved for any or all of the causes aforesaid; (*b*)

If an elector thinks a person has been assessed at too low or too high a rate.

2. If a Municipal elector thinks that any person has been assessed too low or too high, or has been wrongfully inserted on or omitted from the Roll, the Clerk shall, on his request in writing, give notice to such person and to the Assessor, of the time when the matter will be tried by the Court, and the

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son who declares himself, from sickness or extreme poverty, unable to pay the taxes, or who, by reason of any gross or manifest error on the roll as finally passed by the court, has been overcharged more than twenty-five per cent. on the sum he ought to be charged. (Sec. 63.)

(*a*) The procedure *directed* by the statute should be strictly followed. (*The Queen* v. *The Court of Revision of the Town of Cornwall*, 25 U. C. Q. B. 286.)

(*b*) Every assessor before the completion of his roll, and therefore before the return of it, must leave for every party named therein and resident or domiciled or having a place of business within the municipality, and transmit by post to every non-resident who shall have requested his name to be entered thereon and furnished his address to the assessor, a notice of the sum at which his real and personal property has been assessed. (Sec. 49.) If upon inspection of it the person assessed finds, in regard to himself, an error or omission of the description mentioned in this sub-section, he must within fourteen days after the time fixed for the return of the roll (see sec. 50) give notice thereof in writing to the Clerk of the municipality, that he considers himself aggrieved for any or all of the causes mentioned in this sub-section: If the notice required by sec. 49 has not been served upon him, his assessment might be held invalid. (*The Municipality of the Township of London* v. *The Great Western Railway Company*, 16 U. C. Q. B. 500.) But if the notice be served and he either omit to appeal within the time herein limited, or wholly omit to do so, the assessment would bind him. (*McCarrall* v. *Watkins*, 19 U. C. Q. B. 248.) In the case of palpable errors needing correction, the Court may extend the time for making the complaints ten days further. (Sub-sec. 4.) The Court may without notice receive and decide upon the petition from any person assessed for a tenement which has remained vacant during more than three months in the year, for which the assessment has been made, or from any person who declares himself from sickness or extreme poverty, unable to pay his taxes, or who by reason of any gross or manifest error in the roll, has been overcharged more than twenty-five per cent. on the sum he ought to be charged. (Sec. 63.)

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matter shall be decided in the same manner as complaints by a person assessed; (c)

Clerk to give notice by posting up list.

3. The Clerk of the Court shall post up in some convenient and public place within the Municipality or Ward, a list of all complainants on their own behalf against the Assessors' return, and of all complainants on account of the assessment of other persons, stating the names of each, with a concise description of the matter complained against, together with an announcement of the time when the Court will be held to hear the complaints; but no alteration shall be made in the Roll, unless under a complaint formally made according to the above provisions; (d)

Extension of time for complaints.

4. When it shall appear that there are palpable errors, which need correction, the Court may extend the time for making complaints ten days further, and may then meet and determine the additional matter complained of, and the Assessor may for such purpose be the complainant; (e)

(c) Persons assessed may not only, under the preceding sub-section, complain of errors or omissions in regard to themselves, but under this sub-section any municipal elector thinking that any person has been assessed too high or too low, may make a complaint, in which event, he the complainant should in writing request the Clerk to notify the person complained against, and the assessor, of the time when the matter will be tried by the Court, and it will be the duty of the Clerk to do as requested.

(d) The list should give:

1. The names of all complainants on their own behalf, against the assessor's return.
2. The names of all complainants on account of the assessment of others.
3. A concise description of the matter complained against.

Together with an announcement of the time when the Court will be held to hear the complaints. (See sub-sec. 5 as to form of list.) It is also the duty of the Clerk to advertise in a newspaper the time at which the Court will hold its first sitting (sub-sec. 6), and cause to be left at the residence of the assessor a list of all the complaints respecting his roll (sub-sec. 7) and notify each person in respect of whom a complaint has been made (sub-secs. 7, 8, 9, 10) all which must be at least six days before the sitting of the Court. (Sub-sec. 11.)

(e) Ordinary complaints should be made "within fourteen days after the time fixed for the return of the roll." (Sub-sec. 1.) But as regards "*palpable* errors which *need* correction," the Court may under this sub-section, extend the time ten days further. For such purposes the assessor may be complainant. If complaints be made the Court may, pursuant to the adjournment, meet and determine the additional matter complained of.

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Form of notice.

List.

5. Such list may be in the following form: (*f*)

Appeals to be heard at the Court of Revision, to be held at ——, on the —— day of ——, 18—.

Appellant.	Respecting whom.	Matter complained of.
A. B.	Self	Overcharged on land.
C. D.	E. F.	Name omitted.
G. H.	J. K.	Not *bonâ fide* owner or occupant.
L. M.	N. O.	Personal property undercharged.
&c.	&c.	

The Clerk to advertise.

6. The Clerk shall also advertise in some newspaper, published in the City, Town, Village or Township, or if there be no such paper, then in some newspaper published at the nearest place in the County at which one is published, the time at which the Court will hold its first sitting for the year; (*g*)

To leave a list with the assessor.

7. The Clerk shall also cause to be left at the residence of each Assessor a list of all the complaints respecting his Roll; (*h*)

To prepare notice to person complained against.

8. The Clerk shall prepare a notice in the form following, for each person with respect to whom a complaint has been made: (*i*)

Form.

Take notice, that you are required to attend the Court of Revision at ——, on the —— day of ——, in the matter of the following appeal:

Appellant: G. H.

Subject—That you are not a *bonâ fide* owner or occupant, (*or as the case may be.*)

(Signed) X. Y.,
Clerk.

To J. K.

Service to be at residence.

9. If the person resides or has a place of business in the local Municipality, the Clerk shall cause the notice to be left at the person's residence or place of business; (*j*)

(*f*) It is said that the list *may*, not shall, be in the form given, but no departure without good reason should be made from a statutable form.

(*g*) The only thing necessary to be advertized, is, it will be observed, "the time at which the Court will hold its first sitting for the year."

(*h*) This is to apprize the assessor of the cause of complaint, in order that he may at the proper time, be prepared to meet it or explain it.

(*i*) See note *f ante*.

(*j*) The preparation of the notice directed by the preceding subsection would be of little worth, unless the notice, when prepared, were in some way or other communicated to the parties concerned.

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10. Or if the person be not known then to be left with some grown person on the assessed premises, if there be any such person there resident, or if the person be not resident in the municipality, then the notice to be addressed to such person through the Post Office; (*k*) In case of absentees, how served.

11. Every notice hereby required, whether by publication, advertisement, letter or otherwise, shall be completed at least six days before the sitting of the Court; (*l*) Service to be six days.

12. If the party assessed complain in person, or by his agent of an overcharge on his personal property or taxable income, he, or his agent may appear before the court and make a declaration in the form following:—"I A. B., do solemnly declare that the true value of all the personal property, (*or* amount of taxable income, *as the case may be*) assessable against me (*or* against me as Trustee, Guardian, Executor, &c., *or* against C. D., for whom I am agent, *as the case may be*) after deducting the just debts due by me (as such trustee, &c., *or* by C. D.) does not to the best of my knowledge and belief exceed the sum of —— dollars (*and if the declaration be made by an agent, add*) and that I have the means of knowing and do know, the extent and value of the personal property (*or* the amount of income) assessable against C. D."—No abatement shall be made from the amount of income on account of debts due; And the Court shall, thereupon, enter the person assessed at such an amount of personal property (*m*) or Appearance and declaration of persons deeming themselves or any person for whom they act, overcharged on personal property. Effect of declaration.

If the person intended to be notified, reside or have a place of business in the municipality, it will be sufficient if the notice be left at his residence or place of business. If a non-resident, it will be sufficient to address the notice to him through the post office. (Sub-sec. 10.) If not known, the notice may be left with some grown person on the assessed premises. (Sub-sec. 10.)

(*k*) See preceding note.

(*l*) Where a statute says a thing shall be "so many days at *least*," before a given event, the day of the thing done and that of the event, must be both excluded in the computation of the time. (*The King* v. *The Justices of Shropshire*, 8 A. & E. 173.) If no proper or sufficient notice have been given, the parties by appearing to object to the want or sufficiency of the notice, do not waive the objection. (*The Queen* v. *The Corporation of the Town of Cornwall*, 25 U. C. Q. B. 286.) The neglect or failure of the Clerk to give the notices made necessary by this section, may have the effect of preventing complaints from being heard. (*Ib.*)

(*m*) Net personal property is personal property, less certain debts. (note *f* to sub-sec. 20 of sec. 9.) No one is to be assessed for a less sum as the amount of his personal property than the amount of his income during the past year, and this without deduction by reason of

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Wilfully false declaration to be perjury

taxable income, as is specified in the declaration, and no more; and if any party makes a wilfully false statement in any such declaration, he shall be guilty of a misdemeanor, and shall be punished as for perjury;

In other cases the Court to determine, &c.

13. In other cases the Court after hearing upon oath the complainant and the Assessor or Assessors and any witness adduced, shall determine the matter and confirm or amend the Roll accordingly; (*n*)

When to proceed *ex parte*.

14. If either party fails to appear, either in person or by an agent, the Court may proceed *ex parte*. (*o*)

The roll as finally passed to bind all parties.

62. The Roll as finally passed by the Court, and certified by the Clerk, as so passed, shall be valid and bind all parties concerned, notwithstanding any defect or error committed in or with regard to such Roll, (*p*) except in so far as the same

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any indebtedness, "save such as shall equal the annual interest thereof." (Sec. 36.) Here it is declared that *no abatement* shall be made from the amount of income on account of debts due. The two enactments are inconsistent, and the latter will probably be held to prevail. But the form of oath has not been altered to meet the altered state of the law in this respect

The value of personal property, less such debts as may be deducted, or amount of income without deduction for debts, if the assessment be disputed, must be *determined* by the declaration of the party complaining. In other cases the court has a discretion, after hearing all the evidence, to decide according to the best of their judgment. (Sub-sec. 13.) But in cases under this sub-section, the court is bound by the declaration of the party complaining. When the declaration is made, it is the duty of the court, without further inquiry, to enter the person complaining "at such an amount of personal property or taxable income as is specified in the declaration, *and no more*." If the declaration be wilfully false, the remedy under the sub-section is a criminal prosecution for an offence in the nature of perjury. The declaration may be made by an agent.

(*n*) In ordinary cases the court, like all other courts, hears all the evidence adduced bearing upon the subject of inquiry, and then upon the whole case determines the matter of inquiry. The only exception to this rule, as regards Courts of Revision, is pointed out in the preceding note.

(*o*) It should be the duty of the court, before proceeding *ex parte* under this section, to ascertain whether or not due notice has been given to the respective parties. (Per Morrison, J., in *The Queen* v. *The Court of Revision of the Corporation of the Town of Cornwall*, 25 U. C. Q. B. 292.) If the notices be insufficient, the *ex parte* proceedings of the court would probably be held null and void. (*Ib.*)

(*p*) The roll, though passed by the Court, &c., is not binding on the parties where the assessment is wholly illegal. (*The Municipality of London* v. *The Great Western Railway Company*, 17 U. C. Q. B. 264; *Shaw* v. *Shaw*, 12 U. C. C. P. 459; *The Municipality of Berlin* v. *Grange*,

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may be further amended, on appeal to the Judge of the County Court. (*q*)

63. The Court shall also, before or after the first day of June, (*r*) and with or without notice, (*s*) receive and decide upon the Petition from any person assessed for a tenenement which has remained vacant during more than three months in the year for which the assessment has been made, or from any person who declares himself, from sickness or extreme povery, unable to pay the taxes, or who, by reason of any gross and manifest error in the Roll as finally passed by the Court, has been overcharged more than twenty-five per cent. on the sum he ought to be charged, (*u*) and the Court may, subject

Further powers granted to Court of Revision for remitting or reducing taxes.

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1 Er. & Ap. 285; see further, *McCarroll* v. *Watkins*, 19 U. C. Q. B. 248.) If people were obliged to submit to an arbitrary mode of making the assessment, and so compelled to go to the Court of Revision for redress, rather than take the opinion of the law courts upon the illegal act of the assessor, it might lead to great inconvenience and hardship, besides holding the door open to injustice being perpetrated by assessors (per Burns, J., in *The Municipality of London* v. *The Great Western Railway Company*, 17 U. C. Q. B. 266; see also *The Law Society of Upper Canada* v. *The Corporation of the City of Toronto*, 25 U. C. Q. B. 199.) Nor would the decision of the County Judge, it seems, be binding in the cases of illegal assessment. (*Great Western Railway Company* v. *Rouse*, 15 U. C. Q. B. 168; *Sed qu.* see sec. 70.) The County Judge, on an appeal from the Court of Revision, confirmed the value of the station house of the defendants, subject to the question, whether the same could be assessed in addition to the land, leaving this for the determination of a higher court. *Held*, that this was in effect a confirmation of the assessment, there being no provision for a review. (*City of Toronto* v. *G. W. Railway Co.*, 25 U. C. Q. B. 570.) The roll in other cases, as finally passed, &c., is declared valid and binding on all parties concerned, notwithstanding any *defect* or *error* committed in or with regard to such roll. But if afterwards gross and manifest error be alleged resulting in an overcharge of more than twenty-five per cent., the Court may at any time receive and decide upon the petition of the party aggrieved. (Sec. 63.)

(*q*) The Court of Queen's Bench refused to interfere by mandamus, to compel a municipal council to alter the assessment of applicants property as settled on appeal by a Court of Revision. (*In re Dickson and the Municipal Council of the Village of Galt*, 10 U. C. Q. B. 395.)

(*r*) It is the duty of the Court in ordinary cases, to complete their duties before the first of June in each year. (Sec. 60.)

(*s*) In ordinary cases there must be notice in writing given within fourteen days after the time fixed for the return of the roll. (Sec. 61, sub-sec. 1.)

The mode of procedure pointed out is by petition, and it is apprehended, it is the only proper mode of procedure in cases falling within this section.

(*u*) The classes of persons entitled to avail themselves of the provisions of this section, are three, viz.:

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to the provisions of any By-law in this behalf, remit or reduce the taxes due by any such person, or reject the Petition; and the Council of any Local Municipality may, from time to time make such By-laws, and repeal or amend the same. (*p*)

APPEALS FROM THE COURT OF REVISION.

Parties dissatisfied with decision of Court of Revision may appeal to Judge of County Court, and in what manner and

64. If a person be dissatisfied (*a*) with the decision of the Court of Revision, (*b*) he may appeal therefrom, (*c*) in which case—

1. He shall within three days after the decision, in person or by Attorney or Agent, serve upon the Clerk a written notice of his intention to appeal to the County Judge in Counties, and in Cities to the Recorder; (*d*)

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1. A person assessed for a tenement which has remained vacant during more than three months in the year for which the assessment has been made.
2. A person who declares himself, from sickness or extreme poverty, unable to pay the taxes.
3. A person who by reason of any gross and manifest error in the roll, as finally passed by the Court, has been overcharged more than twenty-five per cent., on the sum he ought to be charged.

(*p*) The Court is bound to receive and decide upon the petition of a person coming within the meaning of this section. (See note *m* to sec. 52.) The decision may be either for the remission or reduction of the taxes, or for rejection of the petition (see *In re Judge of the County Court of the County of Perth*, 12 U. C. C. P. 252) subject always to the provisions of any by-law in this behalf, passed by the Municipal Council.

(*a*) The person entitled to appeal is the party dissatisfied. If before his appeal he in any way sanction what has taken place, he may be held to have precluded himself from the appeal. (See *Harrup* v. *Bayley*, 6 El. & B. 218; *In re Justices of the United Counties of York and Peel*, 13 U. C. C. P. 159.) In a doubtful case he should not be deprived of his right of appeal. (*Ib.*)

(*b*) The appeal given is from "the *decision* of the Court of Revision." As to what is or is not a decision of the Court of Revision, see note *m* to sec. 52.

(*c*) The right of appeal is given subject to the regulations herein provided, and unless the regulations be complied with the right of appeal cannot be exercised. (See *In re Wilson and the Quarter Sessions of Huron and Bruce*, 23 U. C. Q. B. 301; *In re Meyers and Wonnacott*, *Ib.* 611; *In re Tozer and Preston*, *Ib.* 310; *In re Pentland* v. *Heath*, 24 U. C. Q. B. 464; *McLellan* v. *McLellan*, 2 U. C. L. J., N. S., 297.) The only security required against the costs of the appeal is the deposit of the sum of two dollars for each party appealed against. (Sub-sec. 3.)

(*d*) All such appeals were formerly to the County Judge. Now in cities and counties, for municipal purposes and for certain judicial purposes (Municipal Act, sec. 356), appeals in cities are very properly

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2. The Clerk shall thereupon give notice to all the parties appealed against, in the same manner as is provided for notice of complaints by the sixty-first section of this Act; (*e*) on what terms.

3. The party appealing shall, at the same time and in like manner, give a written notice of his appeal to the Clerk of the Division Court or of the Recorder's Court (as the case may be) for the District or Division within the limits of which the Municipality is situated, and shall deposit with him the sum of two dollars for each party appealed against as security for the costs of the appeal; (*f*)

4. The Judge or Recorder (as the case may be) shall appoint a day for hearing the appeal; (*g*) Day for hearing.

5. The Clerk of the Division Court or of the Recorder's Court (as the case may be) shall cause a conspicuous notice to be posted up at the office of such Court, containing the names of all the appellants and the parties appealed against, together with the date at which a Court will be held to hear the appeal; (*h*) List of appellants, &c.

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directed to be made to the Recorders. Appeals in towns, villages and townships must, as heretofore, be made to the County Judge,

Unless the person dissatisfied with the decision of the Court of Revision—

1. Within three days after the decision, in person or by attorney or agent, serve upon the Clerk a written notice of his intention to appeal.
2. At the same time and in like manner give a written notice of his appeal to the Clerk of the Division Court or Clerk of the Recorder's Court (as the case may be) for the district or division within the limits of which the municipality is situated.
3. Deposit with the last-mentioned clerk the sum of two dollars for each party appealed against, as security for the costs of the appeal—

there can be no appeal under this section. (See note *c*, *ante*.)

(*e*) See sec. 61, sub-secs. 3, 5, 6, 7, 8, 9, 10 & 11; and sub-sec. 5 of the section here annotated.

(*f*) The Clerk of the City Council may be the Clerk of the Recorder's Court. (Municipal Act, sec. 374.) Had the direction been simply for giving one notice and depositing the money in every case with the Clerk of the Division Court within the limits of which the municipality is situate, there would have been more consistency and less confusion in the working of this sub-section.

(*g*) The Judge or Recorder (as the case may be) is only bound to appoint a day for the hearing of the appeal when all the foregoing preliminaries have been complied with. Then, and not till then, is there jurisdiction to hear the appeal.

(*h*) See note *e*, *ante*.

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Hearing and adjournment.

6. At the Court so holden, the Judge or Recorder (as the case may be) shall hear the appeals, and may adjourn the hearing from time to time and defer the judgment thereon at his pleasure, so that a return can be made to the Clerk of the Municipality before the fifteenth day of July. (*i*)

Appeals with respect to non-resident lands.

65. In case any non-resident, whose land, within the limits of any Town, incorporated Village, or Township, has been or shall be assessed in any revised and corrected Assessment Roll, (*j*) complains by petition to the proper Municipal Council, (*k*) at any time before the first day of May in the year next following that in which the assessment is made, (*l*) such Council shall, at its first meeting, after one week's notice to the appellant, try and decide upon such complaint. (*m*) All decisions of Municipal Councils under this Act may be appealed from, tried and decided, as provided by the sixty-first section of this Act; (*n*) and if the lands shall be found to have been assessed twenty-five per cent. higher than similar land belonging to residents, the Council, Judge or Recorder shall order the taxes rated on such excess to be struck off. (*o*) In all such cases, where the land has been sub-divided into

Reduction for excess.

(*i*) See note *u* to sec. 60.

(*j*) This section probably has reference only to non-residents whose names are not on the roll, and who would therefore not receive the notice made necessary by section 49 of this act, and who would not have any notice of the day on which the roll would be returned, so as to appeal within fourteen days after its return, as required by sec. 61, sub-sec. 1.

(*k*) *i. e.*, To the Municipal Council of the local municipality within which the land is situate.

(*l*) The first provision, similar to this, in aid of non-residents, enabled the dissatisfied non-resident to petition "at any time before the taxes so assessed have been paid or collected." (24 Vic. cap. 38, s. 3.) This was found to interfere so materially with the collection of taxes on non-resident land, that the law was amended by substituting for the words above quoted, the words "at any time before the first day of May in the year next following that in which the assessment is made;" (27 Vic. cap. 19, sec. 8) and such is the limitation in this act provided.

(*m*) The whole Council, whether town, incorporated village or township, and not five members only, as provided by secs. 52, 53, is here constituted a Court for the trial of the complaint.

(*n*) Appeals to the County Judge are given by the 64th section, to which no reference is here made, and yet appeals to the Judge are evidently intended.

(*o*) What the Recorder can have to do with appeals under this section, it is difficult to imagine; for it will be observed that the section in its commencement is confined to towns, incorporated villages and townships, and makes no mention of cities.

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park, village or town lots, if the same are owned by the same person or persons, the statute labour tax shall be charged only upon the aggregate of the assessment, according to the provisions of this Act; (*p*) but no Roll shall be amended under this section of this Act if the complaint was tried and decided before such Roll was finally revised and corrected, under the provisions of the sixteenth, sixty-first, sixty-second and sixty-third sections of this Act. (*q*) This clause shall not affect the right of appeal against the assessment made prior to the year one thousand eight hundred and sixty-six, at any time before the land in question shall have been sold for taxes. If such lands should, during such appeal, be advertised for sale, the land shall be charged with all costs incurred, but no appeal shall be made after the issue of a warrant by the Treasurer or Chamberlain for the collection of taxes. (*r*)

Lots subdivided not to affect rolls revised and corrected.

Nor appeals against former assessments, &c.

66. At the Court to be holden by the County Judge, Recorder or acting Judge of the Court, to hear the appeals hereinbefore provided for, (*s*) the person having the charge of the Assessment Roll passed by the Court of Revision, shall appear and produce such Roll, and all papers and writings in his custody connected with the matter of appeal; (*t*) and such Roll shall be altered and amended according to the decision of the Judge (if then given), who shall write his initials against any part of the said Roll in which any mistake, error or omission is corrected or supplied, (*u*) or if the said Roll be not then produced, or the decision be not then given by the Judge,

Assessment Roll to be produced to the Court.

And amended according to the decision of the Judge

(*p*) The rule is to *charge* the commutation tax for statute labour against every separate lot or parcel, according to its assessed value. (Sec. 89.) But if at any time before the 1st May, in the year next after the assessment, the owner of non-resident lands gives in writing to the County Treasurer a list of the lands owned by him in the municipality, and tenders to him the taxes in full on such lands, and the just commutation money, he is *made liable* to the commutation for statute labour *only* on the aggregate value of all the lands owned by him in the municipality. (Sec. 90.) It is here provided that where the land has been sub-divided into park, village or town lots, the statute labour tax be *charged* only upon the aggregate of the assessment, according to the provisions of this act.

(*q*) See secs. 60, 61, 62 and 63, and notes thereto.

(*r*) See note *l*, *ante*.

(*s*) See sec. 64.

(*t*) Not only must the roll be produced by the person having the custody of the same, but "all papers and writings in his custody connected with the matter of appeal."

(*u*) The power of the Judge or Recorder, according to this section is over mistakes, errors and omissions. These he is to correct or supply.

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Amendments, how certified.

such decision and judgment shall be certified by the Clerk of the Court to the Clerk of the Municipality, who shall forthwith alter and amend the Roll according to the same, and shall write his name against every such alteration or correction. (*v*)

County Judge to have power to examine on oath, &c.

67. In all proceedings before the County Judge, Recorder or acting Judge of the Court, under or for the purposes of this Act, such Judge or Recorder shall possess all such powers for compelling the attendance of and for the examination on oath of all parties, whether claiming or objecting or objected to, and all other persons whatsoever, and for the production of books, papers, rolls and documents, and for the enforcement of his orders, decisions and judgments, as belong to or might be exercised by him, either in term time or vacation, in the same Court, in relation to any matter or suit depending in the said Court. (*a*)

Costs to be apportioned by the Judge and how enforced.

68. The cost of any proceeding before the Judge as aforesaid, shall be paid by or apportioned between the parties, in such manner as the Judge shall think fit, (*b*) and costs ordered to be paid by any party claiming or objecting or objected to, or by any Assessor, Clerk of a Municipality, or other person, may be enforced by execution from the said Court, in the same manner as upon any ordinary judgment recovered in such Court. (*c*)

(*v*) The order to amend is not the amendment. The latter, to be effectually made, should be actually made; and this is what is contemplated in the first part of the section, in the production of the roll, and in the latter part by the certificate to the Clerk, and alteration of the roll by the Clerk. (See also sec. 70.)

(*a*) The powers enumerated are,

1. For compelling the attendance of and for the examination on oath of all parties, whether claiming or objecting, or objected to, and all other persons whatsoever.
2. For the production of books, papers, rolls and documents.
3. For the enforcement of orders, decisions and judgments.

And these may be exercised, as exercised by the Judge or Recorder, either in term or vacation, in his Court, in relation to any matter or suit depending therein.

(*b*) The Court of Queen's Bench in England held that, although it had no jurisdiction to decide an appeal from an inferior tribunal, yet it had jurisdiction to entertain the appeal so far as to examine whether it had jurisdiction, and to give costs to the respondent, who was taken to the Court without his fault. (*Carr* v. *Stringer*, 1 E. B. & E. 123; see further, as to costs, note *g* to sub-sec. 16 of sec. 131 of the Municipal Act, p. 107 of this work.)

(*c*) *i. e.* By execution.

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By what scale of fees costs to be taxed.

69. The costs shall be taxed according to the Schedules of Fees under the Division Courts Act, as in suits for the recovery of sums exceeding forty and not exceeding sixty dollars in the said Courts. (*d*)

The decision of County Judge to be final.

70. The decision and judgment of the Judge, Recorder or acting Judge, shall be final and conclusive in every case adjudicated, (*e*) and the Clerk of the Municipality shall amend the Rolls accordingly. (*f*)

Copy of Roll to be transmitted to County Clerk.

71. When, after the appeal provided by this Act, (*g*) the Assessment Roll has been finally revised and corrected, (*h*) the Clerk of the Municipality shall, without delay, transmit to the County Clerk a certified copy thereof. (*i*)

COUNTY COUNCILS.

Assessment Roll to be examined annually by Municipal Council of the County, for the purpose of equalizing the valuation in the different municipalities for County rates

72. The Council of every county shall, yearly, before imposing any county rate, and not later than the first day of July, (*j*) examine the Assessment Rolls of the different townships, towns and villages in the county, for the preceding financial year, for the purpose of ascertaining whether the valuation made by the Assessors in each township, town or village, for the current year, bears a just relation to the valuation so made in all such townships, towns and villages, and may for the purpose of county rates, increase or decrease the aggregate valuations of real and personal property in any township, town or village, adding or deducting so much per cent. as may, in their opinion, be necessary to produce a just relation between all the valuations of real and personal estate in the county, but they shall not reduce the aggregate valuation thereof for the whole county as made by the Assessors. (*k*)

(*d*) See Con. Stat. U. C. cap. 19, sec. 36, and schedule thereto.

(*e*) See note *p* to sec. 62.

(*f*) See note *v* to sec. 66.

(*g*) See secs. 60, 61, 62, 63, 64.

(*h*) See note *p* to sec. 62.

(*i*) *i. e.* With a view to the collection by the county of taxes due on lands of non-residents, or other lands, in respect of which taxes have not been collected.

(*j*) *Not later than the first day of July, &c.*, see note *i* to sec. 50 and note *u* to sec. 60.

(*k*) It is made the duty of the County Council, yearly:

To examine the assessment rolls of the different townships, towns and villages in the county, for the preceding financial year, for the purpose of ascertaining whether the valuation made by the assessors, in each township, town or village for the current year, bears a just relation to the valuation so made in all the townships, towns and villages.

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If the Clerk of any Municipality omits sending copy of roll.

73. If the Clerk of any Municipality has neglected to transmit a certified copy of the Assessment Rolls, such neglect shall not prevent the County Council from equalizing the

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And for the purpose of county rates, power is given:

To increase or decrease the aggregate valuations of real and personal property in any township, town or village, adding or deducting so much per cent. as may, *in their opinion*, be necessary to produce a just relation between all the valuations of real and personal property in the county.

But *they shall not reduce* the aggregate valuation thereof for the whole county, as made by assessors.

Valuation of property, real or personal, is, to a great extent, a matter of opinion. (See note *a* to sec. 30.) Some men are more sanguine than others, and therefore more likely looking to the future to make a higher estimate of present value than those who are less sanguine. Some men in their inquiries into a subject matter of investigation are more careless than others, and so more likely to take things for granted than others. These and similar considerations influencing assessors acting independently of each other, in different local municipalities, often produce very dissimilar results even in adjoining municipalities. But so far as the county is concerned for the purpose of county rates, a just relation is needed in order that the rate levied may bear as nearly as possible, equally on all the local municipalities in the county. In order to bring this about, when inequality is found, a power to increase or decrease the aggregate valuations of taxable property in the local municipalities of the county, so long as the whole aggregate valuation of the county is not reduced, must be exercised by some body having authority over the whole of the local municipalities, and that body is the County Council.

The Legislature has not attempted to prescribe by what method of proceeding the local municipalities shall be made to bear a just relation to each other. It could hardly have succeeded in any attempt to do so. That must of necessity be left to the judgment of those who are to conduct the operation, and who by reason of their local knowledge are best qualified to do so. (Per Robinson, C. J., in *Gibson* v. *The Corporation of the United Counties of Huron and Bruce*, 20 U. C. Q. B. 119.) We may suppose the Council fixing upon some one township or town in the first place, as that in which the value appears to have been assigned with the strictest regard to truth and justice, and then having selected such a standard, we may suppose them taking up each township, town, &c., and adjusting the valuation by such standard. In doing this, the members of the Council must of necessity be governed by their own judgment, and could not in the nature of things have any rule given to them by which they could arrive at any particular result. It must be entirely a matter of opinion whether, if land cleared or uncleared in township A. is valued at such a sum per acre, land in township B. ought to be valued at any and what other sum per acre. But when the Council shall have adopted the proportional value which land in one township bears to land in another, and shall have compared them all by some standard, then they must ascertain and express how much per cent. must be added or deducted from the assessment in each local municipality, to make them all bear just relation to each other. This is not given as a rule or method of pro-

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valuations in the several Municipalites, according to the best information obtainable; (*l*) and any rate imposed according

ceeding that can guide or assist the Council in adjusting the relation between the different local municipalities, but as a method by which they are to express to the collectors the effect of the relation they have established, as leading to an addition or deduction of so much per cent. to or from the assessement of each individual, according as they have found the assessment that has been made in the particular local municipality too high or too low, as compared with the standard by which they have resolved to abide. This direction to the collector makes his duty afterwards simple and precise. But the business of the Council in equalizing the assessments, is not one that can be accomplished by any arithmetical calculation. No two bodies of men, any more than any two individuals, could be expected to arrive at the same conclusions, if they attempted to make the adjustment independently of each other. The Legislature has not attempted to instruct the Council how they are to proceed in order to do equal justice. It has done the best it could in committing the duty to them on general terms of equalizing the assessments, so as to produce a just relation, but have necessarily left it to them, as best they can, to work out the problem. It is a thing more easily talked of than done.

It is not for a court of law to interfere as regards the reasonableness of the valuations and the conclusions to be come to on that point by comparing the value set upon land in one municipality, with the value set upon land in another. It is not for a Court to judge of that. Even if it were, there are various circumstances to be taken into consideration, as bearing upon the question of computation and value, of which a Court has not the means of judging, for want of that local knowledge which the members of the County Council chosen by the people themselves, must be supposed to possess, and doubtless do possess. It is not merely the fact that one township has been long settled and another not so long, that should alone influence the judgment in making the comparison, nor yet the number of inhabitants, though these are circumstances that would naturally be taken into consideration. Quality of soil and of timber, abundance or scarcity of water, distance from market, and the description of inhabitants, as well as their numbers, are matters that require to be considered in comparing one township with another, and when these and all other matters have been considered, the conclusions to which they lead are to be formed by the Council, and not by a court of law.

But so far as the Legislature has assumed to prescribe rules for the guidance of a municipal body, in the discharge of any duty or exercise of any power, such body must, beyond doubt or question, conform to the rules. And if the Council, where rules have been prescribed for their action, were to go contrary to the rules or in any way violate them, the Court, if this were clearly made out, would interfere by writ of mandamus (*The Queen* v. *The Commissioners of the Land Tax for Tower Division of Middlesex*, 2 El. & B. 694) and the act itself might be held illegal in any proceeding in which its legality would come in question. (*The Corporation of the County of Lincoln* v. *The Corporation of the Town of Niagara*, 25 U. C. Q. B. 578.)

(*l*) It would never do if the neglect of a clerk of the local municipality to transmit a certified copy of his roll were to have the effect

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to the equalized assessment shall be as valid as if all the Assessment Rolls had been transmitted. (*m*)

Valuators to attest their report on oath.

74. In cases where valuators are appointed by the Council to value all the real and personal property within the County, (*n*) they shall attest their report by oath or affirmation, in the same manner as Assessors are required to verify their Rolls, by the one hundred and thirteenth section of this Act. (*o*)

The Apportionment of County rates to be based upon the assessment rolls of preceding year.

75. The Council of a County, in apportioning a County Rate among the different Townships, Towns and Villages within the County, shall, in order that the same may be assessed equally on the whole ratable property of the County, make the amount of property returned on the Assessment Rolls of such Townships, Towns and Villages, or reported by the Valuators as finally revised and equalized for the preceding year, the basis upon which the apportionment is made. (*p*)

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of delaying the entire proceedings of the County Council, with a view to equalization of assessment, especially as it is provided that the equalization is to be made "not later than the first day of July. (Sec. 72.) The only remedy is that provided, viz., to proceed to equalize, notwithstanding the absence of a particular roll or rolls. (See note *k* to the preceding section.)

(*m*) The Council, before imposing a county rate, must equalize the rolls as already mentioned. (Sec. 72.) If empowered to equalize in the absence of some roll or rolls, it follows that the rate imposed on the rolls so equalized must be deemed valid.

(*n*) The proper valuators of property, real and personal, in the different local municipalities, are the assessors. But as these, in the several local municipalities, act independently of each other, and as men perhaps differ more widely on the value of property than other matters of opinion, the results, so far as the whole county is concerned, are anything but equal or uniform. But before a county rate can be imposed, the valuations in the different local municipalities must be equalized so as to bear a just relation to each other. (Sec. 72.) Such equalization has hitherto been effected through the members of the County Council themselves using their local knowledge in order to arrive at as correct a judgment as possible. This section appears to be designed as an aid to them in the exercise of that judgment. It is not declared that the valuation of the County Valuators shall be binding on the Council, or their judgment in any way made a substitute for the judgment of the members of the County Council, on whom devolves the duty of making the equalization so as to produce a just relation.

(*o*) See sec. 113 and notes thereto.

(*p*) It is by sec. 72 declared that the County Council, *before imposing* any rate, and not later than the first day of July, shall examine the

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76. If a new Municipality be erected within a County, so that there are no Assessment or Valuators Rolls of the new Municipality for the next preceding year, the County Council shall, by examining the Rolls of the former Municipality or Municipalities of which the new Municipality then formed part, ascertain to the best of their judgment what part of the Assessment of the Municipality or Municipalities had relation to the new Municipality, and what part should continue to be accounted as the Assessment of the original Municipality, and their several shares of the County Tax shall be apportioned between them accordingly. (*q*)

As to new Municipalities.

77. When a sum is to be levied for County purposes, or by the County for the purposes of a particular locality, the Council of the County shall ascertain, and by By-law direct, what portion of such sum shall be levied in each Township, Town, or Village in such County or locality. (*r*)

County Council to apportion by By-laws, sums required for County purposes.

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rolls of the several local municipalities, in order to equalize them for the current year, so as to bear a just relation to each other. Here it is declared that in *apportioning* a county rate among the different local municipalites the amount of property returned on the rolls or reported by the valuators as finally revised and equalized *for the preceding year*, shall be the basis of apportionment. (See *McCormick* v. *Oakley*, 17 U. C. Q. B. 345.)

(*q*) The apportionment of a county rate must be on the basis of the rolls as finally revised and equalized for the preceding financial year. (Sec. 75.) In the case of a new municipality erected during the current year, it is plain there can be no such roll. But in order that the direction of the statute may be as nearly as possible under the circumstances carried out, it is made the duty of the County Council, by examining the rolls of the former municipality or municipalities of which the new municipality formed a part, to ascertain to the best of their judgment—

1. *What part* of the assessment of the municipality or municipalities had relation to the new municipality;
2. And *what part* should continue to be accounted as one assessment of the original municipality,

So as to apportion between them "their several shares of the county tax."

(*r*) The sum to be levied may be either for county purposes or for the purposes of a particular locality in the county. If the former, the rate must be levied as nearly as possible equally on each local municipality in the county. (*Tylee* v. *The Municipality of Waterloo*, 9 U. C. Q. B. 575.) If the latter, it may be levied in the particular locality, without reference to other localities in the county. The levy is to be made by means of the local machinery, upon a certificate from the Clerk of the County Council, stating the amount and the purpose. (Sec. 78.)

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County Clerk to certify amounts to Clerks of Local Municipalities.

78. The County Clerk shall, before the fifteenth day of August in each year, (*s*) certify to the Clerk of each Township, Town or Village in the County, the total amount which has been so directed to be levied therein for the then current year, for County purposes, or for the purposes of any such locality, and the Clerk of the Township, Town, or Village shall calculate and insert the same in the Collector's Roll for that year. (*t*)

This Act not to affect provisions for rates to raise interest on County debentures.

79. Nothing in this Act contained shall alter or invalidate any special provision for the collection of a rate for interest on County Debentures, whether such provision be contained in any Municipal Corporations Act heretofore or still in force in Upper Canada, or any Act respecting the Consolidated Municipal Loan Fund in Upper Canada, or in any general or special Act authorizing the issue of Debentures, or in any by-law of the County Council providing for the issue of the same. (*u*)

STATUTE LABOUR.

Persons in Military Service exempt.

80. No person in Her Majesty's Naval or Military Service, on full pay or on actual service, shall be liable to perform statute labour or to commute therefor. (*a*)

Who liable, and in what ratio, in towns and villages

81. Every other male inhabitant of a City, Town or Village, of the age of twenty-one years and upwards, and under sixty years of age (and not otherwise exempted by law from performing statute labour), who has not been assessed upon the Assess-

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(*s*) Before the fifteenth day of August, &c. See note *i* to sec. 50, and note *u* to sec. 60.

(*t*) A duty is, by this section, cast upon the County Clerk as well as the Local Clerk. The former must certify *the amount* directed to be levied, and whether for County purposes or local purposes (see note *r* to sec. 77); and the latter, on receipt of the certificate, shall make *the necessary calculations* in order to ascertain the necessary rate, and insert the rate, when ascertained, in the collector's roll for the current year.

(*u*) No special provision for the collection of a rate for interest on county debentures is to be interfered with, whether such provisions be contained—

1. In any Municipal Corporations Act heretofore or still in force in Upper Canada;
2. In any act respecting the Consolidated Municipal Loan Fund in Upper Canada;
3. In any general or special act authorizing the issue of debentures; *or*,
4. In any by-law of the County Council providing for the issue of the same.

(*a*) See note *o* to sec. 332 of the Municipal Act.

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ment Roll of the City, Town or Village, or whose taxes do not amount to two dollars, shall, instead of such labour, be taxed at two dollars yearly therefor, to be levied and collected at such time, by such person, and in such manner as the Council of the Municipality shall by by-law direct, and which person shall not be required to have any property qualification. (*b*) Collector.

82. No person shall be exempt from the tax in the last preceding section named, by reason of his producing a certificate of his having performed statute labour or paid the tax elsewhere, unless he was actually domiciled out of the limits of the City, Town or Village at the time he so performed statute labour or paid the tax. (*c*) Where to be performed.

83. Every male inhabitant of a Township between the ages aforesaid, who is not otherwise assessed to any amount (and who is not exempt by law from performing statute labour), shall be liable to one day of statute labour on the roads and highways in the Township, and no Council shall have any power to reduce the statute labour required under this section. (*d*) Liability of persons not otherwise assessed in townships.

84. Every person assessed upon the Assessment Roll of a Township shall, if his property is assessed at Ratio of service, in case of persons assessed.

not more than $300, be liable to two days' statute labour.

at more than	$300	but not more than	$500	 3	days.
Do.	500	do.	do. 700	 4	"
Do.	700	do.	do. 900	 5	"
Do.	900	do.	do. 1200	 6	"
Do.	1200	do.	do. 1600	 7	"
Do.	1600	do.	do. 2000	 8	"
Do.	2000	do.	do. 2400	 9	"
Do.	2400	do.	do. 3200	10	"
Do.	3200	do.	do. 4000	12	"
and for every	$1000	above	$4000	 1	"

But the Council of any Township, by a By-law operating generally and ratably, may reduce or increase the number of days' labour to which all the parties rated on the Assessment Roll or otherwise shall be respectively liable, so that the number of days' labour to which each person is liable shall be in proportion to the amount at which he is assessed; in Town- Council may reduce or increase the number of days proportionately.

(*b*) See same note.

(*c*) See same note.

(*d*) See note *q* to sec. 332 of the Municipal Act.

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Lots sub-divided as park lots, &c.

ships where farm lots have been sub-divided into park or village lots, and the owners are not resident and have not required their names to be entered on the Assessment Roll, the statute labour shall be commuted by the Township Clerk in making out the list required under the ninety-third section of this Act when such lots are under the value of two hundred dollars, to a rate not exceeding one half per cent. on the valuation, but the Council may direct a less rate to be imposed by a general By-law affecting such village lots. (*e*)

Commutation may be at one dollar per day.

85. The Council of any Township may by By-law direct that a sum not exceeding one dollar a day shall be paid as commutation of statute labour, in which case the commutation tax shall be added in a separate column in the Collector's Roll, and shall be collected and accounted for like other taxes. (*f*)

Commutation may be fixed at any sum not exceeding one dollar.

86. Any local Municipal Council may, by a By-law passed for that purpose, fix the rate at which parties may commute their statute labour, at any sum not exceeding one dollar for each day's labour, and the sum so fixed shall apply equally to residents who are subject to statute labour, and to non-residents in respect to their property. (*g*)

If no by-law, commutation to be at fifty cents.

87. Where no such by-law has been passed, the statute labour in the Townships in respect of lands of non-residents shall be commuted at the rate of fifty cents for each day's labour. (*h*)

Payment of tax in lieu of statute labour may be enforced by distress or imprisonment.

88. Any person liable to pay the sum named in the eighty-fifth section of this Act, shall pay the same to the Collector to be appointed to collect the same within two days after demand thereof by the said Collector; and in case of neglect or refusal to pay the same, the Collector may levy the same by distress of his goods and chattels, with costs of the distress, and if no sufficient distress can be found, then upon summary conviction before a Justice of the Peace of the County in which the local Municipality is situate, of his refusal or neglect to pay the said sum, and of there being no sufficient distress, he shall incur a penalty of five dollars with costs, and in default of payment at such time as the convicting Justice shall order, shall be committed to the Common Gaol of the County, and

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(*e*) See note *q* to sec. 332 of the Municipal Act.

(*f*) See note *p* to sec. 332 of the Municipal Act.

(*g*) See same note.

(*h*) See same note.

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be there put to hard labour for any time not exceeding ten days, unless such penalty and costs, and the costs of the warrant of commitment and of conveying the said person to gaol, shall be sooner paid. (*i*)

Non-residents, when not admitted to perform statute labour.

89. No non-resident who has not required his name to be entered on the Roll, shall be admitted to perform statute labour in respect of any land owned by him, but a commutation tax shall be charged against every separate lot or parcel according to its assessed value. (*j*)

If non-resident admitted, but does not perform.

90. In case any non-resident, whose name has been entered on the resident roll, does not perform his statute labour or pay commutation for the same, the Overseer of the highways in whose division he is placed, shall return him as a defaulter to the Clerk of the Municipality, before the fifteenth day of August; and the Clerk shall, in that case, enter the commutation for statute labour against his name in the Collector's Roll; and if, at any time before the first day of May then next ensuing, the owner of any non-resident's land gives in writing to the County Treasurer a list of the lands owned by him in the Municipality, and tenders to him the taxes in full on such land and the just commutation money as herein provided, he shall be liable to the commutation for statute labour, only upon the aggregate value of all the lands owned by him in each local Municipality; but after the first day of May as aforesaid, no change shall be made in the commutation for statute labour charged against each separate parcel, in consequence of more than one parcel being owned by the same party. (*k*)

Amount of non-resident's statute labour.

COLLECTION OF RATES.

Clerk of the municipality to make out

91. The Clerk of every City, Town, Village or Township, shall make a Collector's Roll or Rolls, as may be necessary, (*l*)

(*i*) See note *r* to sec. 332 of the Municipal Act.

(*j*) See note *o* to sec. 332 of the Municipal Act.

(*k*) See same note.

(*l*) The Clerk must set down on the roll or rolls the following:

1. The name in full of every person assessed.
2. The assessed value of his real and personal property and ratable income.
3. The amount for which the party is chargeable for any sums ordered to be levied by the Council of the county for county purposes.
4. The amount with which the party is chargeable in respect of sums ordered to be levied by the Council of the local municipality for the purposes thereof, or for the commutation of statute labour.

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a Collector's roll; its form and contents

on which he shall set down the name in full of every person assessed, and the assessed value of his real and personal property and taxable income, (*m*) as ascertained after the final revision of the assessments, (*n*) and he shall calculate, and opposite the said assessed value as therein described of each respective party, he shall set down in one column to be headed "County rates," the amount for which the party is chargeable for any sums ordered to be levied by the Council of the County for County purposes, (*o*), and in another column, to be headed "Township," "Village," "Town," or "City rate," the amount with which the party is chargeable in respect of sums ordered to be levied by the Council of the local Municipality for the purposes thereof, or for the commutation of statute labour, (*p*) and in other columns any special rate for collecting the interest upon Debentures issued, or any local rate or school rate or other special rate, the proceeds of which are required by law or by the by-law imposing it, to be kept distinct, and accounted for separately: (*q*) every such last-mentioned rate shall be calculated separately, and the column therefor headed "Special rate," "Local rate," "School rate," as the case may be.

How rates to be headed.

Provincial taxes to be assessed and collected in the same manner as local rates.

92. All moneys assessed, levied and collected under any Act by which the same are made payable to the Receiver General, or other Public Officer for the Public uses of the Province, or for any special purpose or use mentioned in the Act, shall be assessed, levied and collected, in the same manner as local rates, and shall be similarly calculated upon the assessments as finally revised, and shall be entered in the Collector's Rolls in separate columns, in the heading whereof

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5. *And* any special rate for collecting the interest upon debentures issued, *or* any local rate, *or* school rate, *or* other special rate, the proceeds of which are required by law or by the by-law imposing it to be kept distinct, and accounted for separately.

He is then to deliver the roll, certified under his hand, to the collector on or before the first day of October, or such other day as may be prescribed by the by-law of the local municipality. (Sec. 92.) It is also his duty to make out a roll of the lands of non-residents and transmit the same to the county treasurer. (Sec. 93.)

(*m*) See sec. 21, sub-secs. 1, 2, 3.

(*n*) See secs. 61, 63, 64, 70.

(*o*) See sec. 78.

(*p*) See Municipal Act, sec. 332.

(*q*) All these, of course, in separate columns. (See sec. 114.)

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shall be designated the purpose of the rate, (*r*) and the Clerk shall deliver the roll, certified under his hand, to the Collector, on or before the first day of October, or such other day as may be prescribed by a By-law of the Local Municipality. (*s*)

Clerk to make out another roll of lands of non-resid'nts whose names are not in the assessment roll, and transmit it to County Treasurer or

93. The Clerk of every Local Municipality shall also make out a Roll, (*t*) in which he shall enter the lands of non-residents, whose names have not been set down in the Assessor's Roll, together with the value of every lot, part of lot, or parcel, as ascertained after the revision of the rolls, (*u*) and he shall enter opposite to each lot or parcel, all the rates or taxes with which the same is chargeable, in the same manner as is provided for the entry of rates and taxes upon the Collector's

(*r*) The local machinery is the best adapted for the collection of taxes, and therefore is made available for more than local purposes.

(*s*) It is here made the duty of the Clerk to deliver the roll certified under his hand to the collector, on or before the first day of October, or such other day as may be prescribed by a by-law of the local municipality. Unless the roll be certified as directed, the Clerk is not bound to act under it. (*The Corporation of Vienna* v. *Marr*, 9 U. C. L. J. 301.) But if he, notwithstanding the omission of the certificate or other informality, receive the roll, and under its authority collect money, he cannot retain the money as against the Municipal Council on any ground of alleged irregularity in the roll, nor would it be a defence, under such circumstances, to his sureties, that the roll was not certified when delivered to him (*The Corporation of the Township of Whitby* v. *Harrison*, 18 U. C. Q. B. 603; *Municipality of Whitby* v. *Flint*, 9 U. C. C. P. 449) or not delivered within the time limited on that behalf. (*Todd* v. *Perry et al.* 20 U. C. Q. B. 649. As to the limitation of the time, see note *i* to sec. 50 and note *u* to sec. 60.) The fact that a collector of taxes received the money without any roll having been delivered to him and without having taken the oath of office, forms no defence to his sureties in an action for not paying over the money. (*The Corporation of the Township of Whitby* v. *Harrison*, 18 U. C. Q. B. 606.)

(*t*) The Clerk is called upon to make out two rolls:

1. One whereon will appear the names of all taxable parties, and which is to be delivered to the local collector with a view to the collection of taxes from persons liable.
2. Another whereon will appear only lands, and which is to be transmitted to the County Treasurer with a view to the collection of taxes by means of a sale of the lands.

(*u*) The non-residents roll must show:

1. The lands of non-residents whose names have not been set down in the assessor's roll.
2. The value of every lot, part of lot or parcel.
3. All the rates or taxes with which the same is chargeable.

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City Chamberlain.

Roll, (*v*) and shall transmit the Roll so made out, certified under his hand to the Treasurer of the County in which his Municipality is situate, or to the City Chamberlain, as the case may be, on or before the first day of November. (*w*)

COLLECTORS AND THEIR DUTIES.

Duties of Collectors

94. The Collector, upon receiving his Collection Roll, shall proceed to collect the Taxes therein mentioned. (*a*)

Shall demand the payment of rates.

95. He shall call at least once on the person taxed, or at the place of his usual residence or domicile, or place of business, if within the local municipality, in and for which such Collector has been appointed, and shall demand payment of the taxes payable by such person. (*b*)

(*v*) See sec. 91.

(*w*) Neither the Treasurer nor Chamberlain would, it is apprehended, be bound to accept the roll unless certified as directed. (See note *s* to sec. 92.) But the neglect of the Clerk either to transmit the copy directed or his transmission of it in an imperfect form, would not invalidate a sale of non-resident land for taxes. (*Allan* v. *Fisher*, 13 U. C. C. P. 63.)

(*a*) The collector is to proceed to collect the taxes—that is, the money due in respect of taxes. He has no right to accept promissory notes or securities of any kind in lieu of money. The acceptance of such a security could in no way interfere with the right to distrain. (See *Spry* v. *McKenzie*, 18 U. C. Q. B. 161.) Where a collector is charged with the collection of taxes for several years consecutively, he has the right to apply money made or money paid for taxes to the taxes in arrear during the first of the years. (*McBride* v. *Gardham*, 8 U. C. C. P. 296.) It is, among other things, the duty of the collector upon receipt of his roll, to call upon the person charged (sec. 95) and if taxes not paid, to levy therefor (sec. 98) and for that purpose make diligent inquiry to discover sufficient goods and chattels belonging to or in possession of the person charged, whereon a levy may be made. (Secs. 97, 107.) If none can be found after diligent search, the collector may relieve himself by oath from further accountability in regard to taxes unpaid. (Sec. 107.)

(*b*) The demand is essential to the validity of subsequent proceedings authorized by the statute. (*De Blaquiere* v. *Becker et al.* 8 U. C. C. P. 167; *Campbell* v. *The Corporation of Elma*, 13 U. C. C. P. 296.) It must, it is presumed, be made by the collector himself; for it is said "*he* shall call at least once, &c." It would be well for the collector when making the demand to be accompanied by some person, who in the event of proceedings being had against the collector, could testify to the demand. Apparently it need not be made personally of the person liable to pay, for it is said the call is to be "on the person taxed, *or* at the place of his usual residence or domicile, *or* place of business, if within the local municipality." So that a demand made of some person at the place of residence, domicile or place of business,

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96. If any person whose name appears on the Roll be not resident within the Municipality, the Collector shall transmit to him by post, a statement and demand of the taxes charged against him in the Roll (*c*) By post in cases of non-residents.

97. In case any person neglects to pay his taxes for ten days after such demand as aforesaid, (*d*) the Collector may by himself or by his agent, (*e*) levy the same with If payment be not made, collectors to levy tax by

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of the party liable, would, it seems, be sufficient. (See *De Blaquiere* v. *Becker et al.* 8 U. C. C. P. 167.) In the event of the death of the collector, an entry made by him in the usual course of his business, would probably be evidence of the demand. (See *Barton* v. *The Corporation of the Town of Dundas*, 24 U. C. Q. B. 273.)

(*c*) In the case of non-residents, the transmission of the statement and demand, under the 16 Vic. cap. 182, was held not to be a condition precedent to the power of distress. (*De Blaquiere* v. *Becker et al.* 8 U. C. C. P. 167.) But now in the case of non-residents who have requested their names to be entered on the roll, it is provided that the collector, after one month from the date of the delivery of the roll to him, and after fourteen days from the time such demand as aforesaid has been transmitted to him by post, may make distress, &c., (sec. 98) clearly intending that to such non-residents the demand or statement shall be a condition precedent to the distress.

(*d*) *i. e.* The demand mentioned in sec. 95, which in the case of persons named on the roll, is a condition precedent to the right of distress. (*De Blaquiere* v. *Becker et al.*, 8 U. C. C. P. 167.) It would also seem that the notice required by sec. 49, is a condition precedent to the right of distress, in the case of a person whose name is on the roll. (*The Municipality of London* v. *The Great Western Railway Company*, 16 U. C. Q. B. 502.)

(*e*) The collectors of taxes are officers annually appointed to collect the taxes, which in far the greater number of instances they are able to do, by merely calling upon those against whom they are charged. In cases where they may have to resort to compulsory measures, although the Legislature has enabled them to levy in person and without the authority of any process, yet it was scarcely contemplated that the collectors themselves would, as a matter of course, act the part of bailiffs and auctioneers in seizing and selling. (Per Robinson, C. J., in *Fraser* v. *Page et al.* 18 U. C. Q. B. 336; see also *Newberry* v. *Stephens*, 16 U. C. Q. B. 69.) So that while power is given to the collector by himself to levy, it also said he may by his agent levy. But when a bailiff or agent is appointed he should receive a warrant, which may be in the following form:

CITY OF ——, To wit. } To A. B., my Bailiff.

You are hereby authorized and required to distrain the goods and chattels of C. D. of, &c., which you shall find on the premises of the said C. D., at, &c., or any goods and chattels in his possession, wherever the same may be found within the county of, &c., for the sum of, &c., rated against him for taxes on the collector's roll of, &c., for the year, &c., and now in arrear and unpaid, and in default of payment of

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distress and sale.

costs, (*f*) by distress of the goods and chattels (*g*) of the person who ought to pay the same, (*h*) or of any goods or chattels in his possession, (*i*) wherever the same may be found

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such arrears of taxes and the lawful costs of the said distress, to sell and dispose of the said distress according to law, for the recovery of the said arrears of taxes together with the said costs, and for your so doing, this shall be your sufficient authority.

Given under my hand at, &c., this —— day of ——, A.D. 186—.

E. F., Collector.

Of course the collector would be liable for anything done by the bailiff, which he had authorized the bailiff to do. (*Corbett* v. *Johnston et al.* 11 U. C. C. P. 317; S. C. 7 U. C. L. J. 319.) Whether he would like a sheriff be liable for anything done by the bailiff, without the authority of or contrary to the direction of the warrant, is a question which has never yet been determined. The late Chief Justice McLean was of opinion in the affirmative, but the late Sir John Robinson expressed grave doubts on the question. (See *Fraser* v. *Page et al.* 18 U. C. Q. B. 336, 338.) If there be several rates, the legal separable from the illegal rates, unless the sums due in respect of the legal rates be paid or tendered, an action of replevin will not lie. (*Corbett* v. *Johnston et al.*, 7 U. C. L. J. 319.)

(*f*) *With costs.* Until this act became law, there was no scale or tariff of costs (see *Murray* v. *McNair*, 2 Local Courts Gazette, 14), but now it is provided that "the costs chargeable shall be those payable to bailiffs under the Division Courts Act." (Sec. 97.)

(*g*) A planing machine standing by its own weight on the floor without fastening, with belts and an engine to work it, has been held to be a chattel liable to seizure for taxes. (*Hope et al.* v. *Cumming*, 10 U. C. C. P. 118.) So an engine and boiler detached from the freehold by a fire, have been held to be chattels. (*Walton et al.* v. *Jarvis*, 14 U. C. Q. B. 640.) So temporary floors, scantling, partitions, presses, shafting, vats, cocks and other such things. (*Hughes et al.* v. *Towers*, 16 U. C. C. P. 287.) So machinery of different kinds detached from the freehold (*Carscallan* v. *Moodie*, 15 U. C. Q. B. 304) unless perhaps for a temporary purpose, with the intention of again replacing it in its former position. (*Grant* v. *Wilson et al.*, 17 U. C. Q. B. 144; see also *The Great Western Railway Company* v. *Bain*, 15 U. C. C. P. 207.)

(*h*) What is the meaning of the expression "who ought to pay the same?" Is it to be considered with reference to the time during which it may be said the collector's roll is in force for each year's taxes, or is to be understood as extending to any length of time and to any person who may happen at the time of the distress to be in possession? The former appears to be the proper construction of the act. (*Holcomb* v. *Shaw*, 22 U. C. Q. B. 92; *Smith* v. *Shaw*, 8 U. C. L. J. 297.)

(*i*) It is evident the Legislature intend the taxes to be paid in some way, and think it better to make *any* goods in the possession of the party, whether belonging to himself or not, liable without doubt for the taxes, than that the collector should be at the risk and expense of contesting title with every one who might claim title to the goods seized. (Per Robinson, C. J., in *Fraser* v. *Page et al.*, 18 U. C. Q. B. 340.) No action will lie against a collector or his bailiff for distraining

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within the County in which the Local Municipality lies; (*j*) the costs chargeable shall be those payable to Bailiffs under the Division Courts Act. (*k*)

When Collectors may distrain for rates on non-resident land

98. In case of the land of non-residents, who have required their names to be entered on the Roll, (*l*) the Collector, after one month from the date of the delivery of the Roll to him, and after fourteen days from the time such demand as aforesaid has been transmitted to him by post, (*m*) may make distress of any goods and chattels which he may find upon the land, (*n*) and no claim of property, lien or privilege shall be available to prevent the sale, or the payment of the taxes and costs out of the proceeds thereof. (*o*)

Public notice of sale to be given, and in what manner

99. The Collector shall, by advertisement, posted up in at least three public places in the Township, Village or Ward wherein the sale of the goods and chattels distrained is to be made, give at least six days' public notice of sale, and of the name of the person whose property is to be sold; (*p*) and at the time named in the notice, the Collector or his agent shall sell at public auction the goods and chattels distrained, or so much thereof as may be necessary. (*q*)

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the goods of a stranger without necessity, upon the allegation that there were goods enough of the person who ought to pay the taxes to satisfy the demand. (*McElheron* v. *Menzies*, 7 U. C. L. J. 244.)

(*j*) The range, it will be observed, is a pretty wide one—the whole of the county in which the local municipality lies.

(*k*) See note *f* ante.

(*l*) Occupied land is not to be deemed land of non-residents. (*Mace* v. *Ruttan*, 7 U. C. L. J. 299.)

(*m*) *DeBlaquiere* v. *Becker et al.*, 8 U. C. C. P. 167, deciding, under the 16 Vic. cap. 182, that a demand was not a condition precedent to a distress, must at all events, so far as non-residents who have required their names to be entered on the roll are concerned, be taken as no longer law. The demand, or statement and demand, here mentioned, is made necessary by sec. 96 of this act.

(*n*) See note *g* to sec. 97.

(*o*) See note *i* to sec. 97.

(*p*) Errors or defects in the advertisement of sale would not, it is believed, affect the title of the purchaser to the goods and chattels by him purchased at the Collector's sale. (See *Jarvis* v. *Cayley*, 11 U. C. Q. B. 282; *Paterson* v. *Todd*, 24 U. C. Q. B. 296.)

(*q*) The Collector, after sale, would, it is apprehended, be in a position to sue the purchasers for the price of the things sold (see *Jarvis* v. *Cayley*, 11 U. C. Q. B. 282); but, in order to bind the Collector as against the purchaser, there should probably be some memorandum in writing on delivery of the goods sold, so as to bind the sale. (See *Mingaye* v. *Corbett*, 14 U. C. C. P. 557.)

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Surplus, if unclaimed, to be paid to the party in whose possession the goods were.

100. If the property distrained has been sold for more than the amount of the taxes and costs, and if no claim to the surplus be made by any other person, on the ground that the property sold belonged to him, or that he was entitled by lien or other right to the surplus, (*r*) such surplus shall be returned to the person in whose possession the property was when the distress was made. (*s*)

Or to admitted claimant.

101. If any such claim be made by the person for whose taxes the property was distrained, (*t*) and the claim is admitted, the surplus shall be paid to the claimant. (*u*)

If the right to such surplus be contested.

102. If the claim is contested, such surplus money shall be paid over by the Collector to the Treasurer or Chamberlain of the local Municipality, who shall retain the same until the respective rights of the parties have been determined by action at law or otherwise. (*v*)

Taxes not otherwise recoverable may be recovered by action.

103. If the taxes payable by any person cannot be recovered in any special manner provided by this Act, they may be recovered with interest and costs as a debt due to the local

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(*r*) The goods and chattels of *any* person in the possession of the person who ought to pay taxes (sec. 97), or *any* goods on the land of a non-resident who has required his name to be entered on the roll (sec. 98), may be distrained and sold for taxes; but if a surplus, that surplus, if the goods and chattels were really not the property of the person for whose taxes they were sold, in *law and equity* must belong to the owner of the goods and chattels so sold. It is hard that any part of his goods should be sold to pay the liability of another, with whom he has no privity, but it would be still more hard if he could not claim any surplus that might be left after payment of the arrears of taxes and costs.

(*s*) The receipt of the surplus by the owner of the goods would not, unless accepted in satisfaction, be any condonation, so as to prevent an action being brought to recover the value of the goods if the sale were from any cause illegal. (See *Evans* v. *Wright*, 2 H. & N. 527; *Robinson* v. *Shields*, 15 U. C. C. P. 386.)

(*t*) See note *r* to sec. 100.

(*u*) If the claim be disputed, the Collector may pay over the money to the Treasurer or Chamberlain of the local municipality, who may retain the same until the rights of the parties have been determined by action at law or otherwise. (Sec. 102.)

(*v*) It is not said that the Collector, on payment of the money to the Treasurer or Chamberlain, would be thereby discharged or relieved from acting at the suit of the rival claimants, or either of them; but such is the fair intendment of the section; and where the sale itself is legal, such would probably be the construction put upon the section by the Courts.

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Municipality; (*a*) in which case the production of a copy of so much of the Collector's Roll as relates to the taxes payable by such person, purporting to be certified as a true copy by the Clerk of the local Municipality, shall be *primâ facie* evidence of the debt. (*b*)

Copy of Collector's roll to be *prima facie* evidence of amount due.

(*a*) The right to sue for taxes is apparently only given when the taxes "cannot be recovered in any special manner provided by this act," such as distress and sale in the case of resident tax-payers, and sale of lands in the case of non-resident proprietors who have requested their names to be put on the roll. (See *Municipality of Berlin* v. *Grange*, 5 U. C. C. P. 211.) In order to entitle a Municipal Corporation to sue for a tax imposed in the ordinary manner upon resident rate-payers, the Corporation must be able to show, in the first place, that the defendant's name is on the roll (see *Sargant* v. *The City of Toronto*, 12 U. C. C. P. 185; *McCarrall* v. *Watkins*, 19 U. C. Q. B. 248), and, in the next place, that they have done what would be necessary to entitle them to distrain by warrant for the same tax, if the person sued had goods that might be seized, except perhaps there would be no occasion to make the previous demand mentioned in section 95 (per Robinson, C. J., in *The Municipality of London* v. *The Great Western Railway Company*, 16 U. C. Q. B. 502); and neither by distress nor by action can a rate-payer be compelled to pay a tax of which such notice has not been given to him as the law has provided in the 49th section of this act. (*Ib.*) By this is not meant that the plaintiffs in such an action are bound to set forth in the declaration that they have given such notice as the law requires before the assessment roll was finally completed—that may perhaps be assumed till the contrary is shown—but it must be open to the defendant to deny that such notice was given, and to put plaintiffs to the proof of it. (*Ib.*) *Quære*, as to the effect of an averment in the declaration, "that a tax of 128*l.* 17*s.* 11*d.* was *duly assessed* against the defendant for the year 1856, of which the defendants *had notice*. (*Ib.*) It does not necessarily mean more than that some time before the action was brought, and, for all that appears, after the assessment roll had been completed, and the time for the appeal had passed, the defendants had due notice that such a tax was assessed against them. (*Ib.*) In order to entitle the Corporation to sue a non-resident owner of lands, it must not only appear that the special remedies provided by the act are unavailable, and that the defendant's name is on the roll, but, besides, it must be distinctly averred and proved that the owner had requested his name to be placed on the roll. (*The Municipality of Berlin* v. *Grange*, 1 Er. & Ap. 279.)

(*b*) The former part of the section provides for the action, and this part for the evidence to sustain it. The *production* of a copy of *so much* of the Collector's roll as relates to the taxes payable by such person, *purporting* to be certified as a true copy by the Clerk of the local municipality, shall be *prima facie* evidence of the debt. No proof of the signature of the Clerk is apparently made necessary. If the certificate produced purports to be signed by him, it will be received on production. But when received, it is only *prima facie* evidence; in other words, its accuracy, or the facts it represents, may be disputed and disproved.

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Collector to return his roll and pay over the proceeds by the day to be appointed by Municipal Council.

104. On or before the fourteenth day of December in every year, or on such day in the next year not later than the first of April, as the Council of the City, Town, Township or Village may appoint, every Collector shall return his Roll to the Treasurer or Chamberlain of his Municipality, (*c*) and shall pay over the amount payable to such Treasurer or Chamberlain; specifying in a separate column on his Roll how much of the whole amount paid over is on account of each separate rate. (*d*)

(*c*) It is the duty of the Collector, under this section, on or before a day named or appointed for the purpose, not later than the 1st April (see note *i* to sec. 50, and note *u* to sec. 60), to return his roll, and pay over the amount payable, specifying in a separate column on his roll how much of the whole amount is paid over on account of each separate rate. Does the Collector at any time, and if so, when, become incapable of exercising his functions as Collector? Suppose the Municipal Council does not extend the time beyond the 14th of December, does he on that day become *functus officio*? No doubt he may receive moneys on account of taxes after that day, provided he has not made his return, and no doubt his sureties would be liable for moneys so received. (See *Corporation of Whitby* v. *Harrison*, 18 U. C. Q. B. 606; *Todd* v. *Perry et al.*, 20 U. C. Q. B. 649.) But whether he may take the *compulsory powers* with which he is invested, is another question. The enactments which provide for the appointment of Collectors (sec. 164 of the Municipal Act, and secs. 19 and 20 of the Assessment Act), contain no limitation as to the time they shall hold office; and it is declared by sec. 177 of the Municipal Act, that all officers appointed by a Council shall hold office until removed by the Council. (See *The Corporation of the Township of Beverley* v. *Barlow et al.*, 7 U. C. L. J. 117; *In re McPherson* v. *Beeman*, 17 U. C. Q. B. 99.) The better opinion seems to be, that the Collector does not become *functus officio* so long as he holds the office, and so long as his roll is not returned; in other words, that his authority to collect taxes on the roll is co-extensive with the term of his office, provided in the interval he has not returned his roll. The different provisions for the enlargement of the time for his making his return are in favour of the Collector, and provisionally in favor of the rate-payers. This was the opinion of McLean, J., and Burns, J. (Robinson, C. J., *dissentiente*), in *Newberry* v. *Stephens*, (16 U. C. Q. B., 65,) and was in fact the decision of the court in that case since recognized in *McBride* v. *Gardham* (8 U. C. C. P. 296), and *McLean and Farrell* (21 U. C. Q. B. 441). *Teefle* v. *Carson* (1 U. C. L. J. 29), to the contrary, must be considered as overruled.

(*d*) If a Collector refuse or neglect to pay to the proper Treasurer or Chamberlain, or other person authorized to receive the same, the sums contained on his roll, or duly account for the same as uncollected, then not only may the ordinary remedy by action against his sureties be applied, but the Treasurer or Chamberlain may, within twenty days after the time the payment ought to have been made, issue a warrant under his hand and seal, directed to the Sheriff of the county or High Bailiff of the city (as the case may be), commanding him to levy of the goods and chattels, lands and tenements of the Col-

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105. In case the Collector fails or omits to collect the taxes or any portion thereof, by the day appointed or to be appointed as in the last preceding section mentioned, the Council of the City, Town, Village or Township may, by resolution, authorize the Collector or some other person in his stead, to continue the levy and collection of the unpaid taxes in the manner and with the powers provided by law for the general levy and collection of taxes, but no such resolution or authority shall alter or affect the duty of the Collector to return his Roll, or shall in any manner whatsoever invalidate or otherwise affect the liability of the Collector or his sureties. (*e*)

Another person may be employed to collect taxes which the collector does not collect by a certain day.

106. If any of the taxes mentioned in the Collector's Roll remain unpaid, and the Collector be not able to collect the same, he shall deliver to the Chamberlain or Treasurer of his Municipality, an account of all the taxes remaining due on the Roll; and in such account the Collector shall show, opposite to each assessment, the reason why he could not collect the same, by inserting in each case the words "non-resident" or "not sufficient property to distrain," as the case may be. (*f*)

Proceedings if any taxes are returned as unpaid.

107. Upon making oath before the Treasurer or Chamberlain that the sums mentioned in such account remain unpaid, and that he has not, upon diligent enquiry, been able to dis-

When collector to be credited for the amount.

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lector and his sureties, such sum as remains unpaid and unaccounted for, with costs, and to pay to the Treasurer or Chamberlain the sum so unaccounted for, and to return the warrent within forty days after the date thereof. (Sec. 182.)

(*e*) This section is intended to give the Council power by resolution to authorize the same collector or any other person in his stead, *to continue* collections which are being made, but not completed, at the time appointed for the return of the collector's roll. The power, however, cannot be exercised *after the final return of the roll* by the collector, and after the lapse of several years. (*Holcomb* v. *Shaw*, 22 U. C. Q.B. 92; *Smith* v. *Shaw*, 8 U. C. L. J. 297.) But the land is not thereby excused; the arrears of taxes are a special lien on the land. (Sec. 108.)

(*f*) It is the duty of a collector to return his roll by a day named or appointed for the purpose. (Sec. 104.) It is also his duty under the section here annotated, when unable to collect any taxes, to deliver an account of all taxes remaining due on the roll, and in such account he is required to show the reason why he could not collect the same. If he fail in the performance of these duties, proceedings by action may be had against himself, or his sureties and himself, proceedings also of a very summary character. (See sec. 182.) If these remedies be of no avail (and not till then) a court of law may interfere by mandamus. (*In re Quin and the Treasurer of the Town of Dundas*, 23 U. C. Q. B. 308.)

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cover sufficient goods or chattels belonging to or in possession of the parties charged with or liable to pay such sums, whereon he could levy the same, or any part thereof, the Collector shall be credited with the amount not realized. (*g*)

Taxes to be a lien upon land.

108. The taxes accrued on any land shall be a special lien on such land, having preference over any claim, lien, privilege or incumbrance of any party except the Crown, and shall not require registration to preserve it. (*h*)

YEARLY LISTS OF LANDS GRANTED BY THE CROWN.

Lists of lands granted, &c., to be furnished annually to County Treasurer by Commissioner of Crown Lands

109. The Commissioner of Crown Lands shall, in the month of February in every year, transmit to the Treasurer of every County, a list of all the land within the County, located as free grants, sold or agreed to be sold by the Crown, or leased, or in respect of which a license of occupation issued during the preceding year. (*i*)

(*g*) This appears to intend that the proper course is, for the Municipal Council in the first instance to debit the collector with all the taxes on his roll, and from time to time, as he pays over moneys, credit him therewith, until he finds himself unable to collect the balance, and then accept from him the oath here required and credit him with the amount not realized, so as to close the account.

(*h*) The effect of this provision will make it necessary for every intending purchaser, to search not only the Register Office for deeds or conveyances affecting land, but the office of the County or other Treasurer who would be able to give information as to the taxes, if any due upon it. (See remarks of Burns, J., in *Holcomb et al.* v. *Shaw*, 22 U. C. Q. B. 107.) But apparently it is no part of attorney or solicitor's duty, under an ordinary retainer, for the investigation of title, to make such a search. (*Ross* v. *Strathy*, 16 U. C. Q. B. 430.) The lien is not only made special, but one having preference over any claim, lien, privilege or incumbrance of any party except the Crown, but even in the case of the Crown, if the lien have attached before the Crown became the owners of the land, the lien holds as against the Crown. (Per Adam Wilson, J., in *The Secretary of War* v. *The Corporation of the City of Toronto*, 22 U. C. Q. B. 555.)

(*i*) All land in Upper Canada, subject to certain exceptions, is liable to municipal taxation. (Sec. 9.)

One of these exceptions is, all property vested in or held by Her Majesty. (Sub-sec. 1.)

This exception, however, is qualified by a declaration that when any such property is occupied by any person otherwise than in an official capacity, the occupant shall be assessed in respect thereof, but the property itself shall not be liable. (*Ib.* sub-sec. 2.)

Unpatented land, sold or agreed to be sold to any person, or located as a free grant, so far as the interest of the purchaser or locatee is concerned, is made liable to taxation. (Sec. 128.)

For the purposes of assessment, the motive for requiring a return to the Treasurers of counties of lands located as free grants, sold or agreed

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110. The County Treasurer shall furnish to the Clerk of each local Municipality in the County a copy of the said lists, as far as regards lands in such Municipality, and such Clerk shall furnish the Assessors respectively a statement showing what lands in the said annual list are liable to assessment within such Assessor's assessment district. (*j*)

County Treasurer to furnish a copy of the list to the Clerks of local municipalities.

COUNTY TREASURERS, LOCAL TREASURERS, CLERKS AND ASSESSORS. THEIR DUTIES.

111. The Treasurer of every County in Upper Canada shall furnish to the Clerk of each Municipality in the County a list of all the lands in his Municipality, in respect of which any taxes shall have been in arrears for five years preceding the first day of January in any year; (*k*) and the said list shall be so furnished on or before the fifteenth day of February in every year, (*l*) and shall be headed in the words following: "List of lands liable to be sold for arrears of taxes in the year one thousand eight hundred and ——;" (*m*) and for the

County Treasurer to furnish local Clerks with lists of lands five years in arrear for taxes.

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to be sold or leased by the Crown, or in respect of which a license of occupation has issued, is self-evident. (Per Draper, C. J., in *Street* v. *The Corporation of the County of Kent*, 11 U. C. P. P. 260.) When *Street* v. *The Corporation of the County of Kent* was decided, the assessment law had not been extended to lands "sold or agreed to be sold." That was done by the statute 27 Vic. cap. 19, secs. 9, 10, 11, which has been embodied in the section under consideration.

(*j*) The County Treasurer is made the organ of communication between the Government and the officers of the local municipalities. The officers for whom the information is really designed, and who will make the necessary use of it, are the local assessors.

(*k*) No taxes for a year or part of a year are made payable until the Collector's roll is placed in the Collector's hands; because, until that is done, there is no authority to receive them. This may be as late as the 1st October. (Sec. 92.) So that it was held, that the year's taxes could not be considered as due in any sense, until after the time for appealing from the assessment roll had expired, and the municipality had fixed the rate which should be imposed. (*Ford* v. *Proudfoot*, 9 Grant, 478.) But to meet the effect of this decision, it is provided by the latter part of this section, that the taxes for the first year of the five which have expired, under the provisions of this act, on any land to be sold for taxes, shall be deemed to have been due for five years, although the same may not have been placed on the collection roll "*until some month in the year later than the month of January.*" The effect of this provision, read in connection with sec. 18 of this act, is to make the taxes of the first year relate to the first day of January, no matter when placed on the roll, and so in the computation of each subsequent year of the five years.

(*l*) *On or before the fifteenth day of February*, &c. See note *i* to sec. 50, and note *u* to sec. 60.

(*m*) The purport of this list, and the object of furnishing it, will hereafter appear. (Secs. 112, 114.)

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purposes of this Act, the taxes for the first year of the five which have expired, under the provisions of this Act, on any land to be sold for taxes, shall be deemed to have been due for five years, although the same may not have been placed upon a collection roll until some month in the year later than the month of January. (*n*)

Local Clerks to keep the lists in their offices open to inspection, and give copies to Assessors.

Duty of Assessors to notify occupants.

Lists to be returned.

112. The Clerk of every Municipality in each County is hereby required to keep the said list, so furnished by the County Trersurer, on file in his office, subject to the inspection of any person requiring to see the same; and he shall also deliver to the Assessor or Assessors of the Municipality, each year, as soon as such Assessor or Assessors are appointed, a copy of such list; (*o*) and it shall be the duty of the Assessor or Assessors to ascertain if any of the lots or parcels of land contained in such list are occupied, and to notify such occupants, and also the owners thereof, if known and resident within the Municipality, upon their respective assessment notices, that the land is liable to be sold for arrears of taxes, and enter in a column (to be reserved for that purpose) the words "occupied and parties notified," or "not occupied," (as the case may be.) All such lists shall be signed by the Assessor or Assessors and returned to the Clerk with the Assessment Roll, (*p*) and the Clerk shall file the same in his office for

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(*n*) See note *k*, above.

(*o*) The duty of the Clerk of the local municipality, in regard to the list furnished to him, pursuant to the requirements of the preceding section, are twofold:

1. To keep the said list on file in his office, subject to the inspection of *any* person requiring to see the same.
2. To deliver to the Assessor or Assessors, each year, when appointed, a copy of such list.

He has other duties to perform in regard to said list, under sec. 114. Neglect of any of these duties may be summarily punished. (See s. 118.)

(*p*) The duty of the Assessor or Assessors, on receipt of the copy of the list, is fourfold:

1. To ascertain if any of the lots or parcels of land contained in such list are occupied.
2. To notify the occupants *and* owners thereof, if known or resident within the municipality.
3. To enter in a column, reserved for the purpose, the words "occupied and parties notified," or "not occupied," (as the case may be.)
4. To sign the list or lists, and return same to the Clerk, with assessment roll.

Besides, the assessors must attach to the list a certificate, signed by them, and verified by oath or affirmation. (Sec. 113.) Neglect of any of these duties may be summarily punished. (See sec. 118.)

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public use; (*q*) and every such list, or copy thereof, shall be received in any Court as evidence in any case arising concerning the assessment of such lands; (*r*) and the duties herein imposed upon the Treasurer of any County and the Clerk and Assessors of any Municipality, shall be performed by the Chamberlain or Treasurer and the Clerks and Assessors of Cities and Towns withdrawn from the jurisdiction of the Council of the County in which such Cities and Towns are situate. (*s*)

As to towns and cities withdrawn from counties.

113. All Assessors shall attach to each such list (*t*) a certificate signed by them, and verified by oath or affirmation, in the form following: (*u*)

Assessor's certificate.

"I do certify that I have examined all the lots in this list named, and that I have entered the names of all occupants thereon, as well as the names of the owners thereof, when known, and that all the entries relative to each lot are true and correct, to the best of my knowledge and belief."

Form.

114. The Clerk of each Municipality shall, before the first day of May in each year, examine the Assessment Roll when returned by the Assessor, and ascertain whether any lot embraced in the said list last received by him from the County Treasurer, is entered upon the Roll of the year as then occupied; and the said Clerk shall, on or before the first day of May in each year, furnish to the County Treasurer a list of the several parcels of land which shall appear on the Resident Roll as having become occupied; (*a*) and the said County

Local Clerks to certify lands which have become occupied.

(*q*) Not only is the Clerk to file in his office the original list, "subject to the inspection of any person requiring to see the same" (see note *o*, above), but to file the signed copies returned to him by the assessors "for public use."

(*r*) The list or copy thereof shall be received in evidence. The provision is not for the admission of a certified copy in evidence on its production, as in sec. 103. (See note *b* to sec. 103.)

(*s*) Every city or town withdrawn is a county of itself for municipal purposes. (Municipal Act, sec. 356.)

(*t*) *i. e.* The list mentioned in sec. 112. (See note *p* to that section.)

(*u*) The oath or affirmation may, it is presumed, be made before the head or other members of the Council. (See sec. 366 of the Municipal Act, and notes thereto.)

(*a*) **The duties of the Clerk, under this section, are:**

1. To examine the assessment roll, and ascertain whether any lot embraced in the list received by him from the County Treasurer, under sec. 111, is entered upon the roll as occupied.

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County Treasurer to certify taxes due on them.

Clerk to insert such amount on Collector's roll.

Treasurer shall, on or before the first day of July in the then current year, return to the Clerk of each Municipality an account of all arrears of taxes due in respect of such occupied lands, including the per centage chargeable under section one hundred and twenty-six of this Act; (*b*) and the Clerk of each Municipality shall, in making out the Collector's Roll of the year, add such arrears of taxes to the taxes assessed against such occupied lands for the current year, and such arrears shall be collected in the same manner, and subject to the same conditions as all other taxes entered upon the Collector's Roll. (*c*)

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2. To furnish the County Treasurer with a list of the several parcels of land which appear on the resident roll as having become occupied.

These he must do on or before the first day of May, as to which see note *i* to sec. 50, and note *u* to sec. 60. Neglect thereof may be summarily punished. (See sec. 118.)

(*b*) The list furnished by the local Clerk, under the preceding part of this section, to the County Treasurer, is to enable the latter to report the arrears and per centage due in respect of non-resident land since become occupied, with a view to the collection of taxes thereon by distress and sale of goods and chattels of the occupant.

(*c*) The arrears may be collected in the *same manner*, and *subject to the same conditions*, as all *other* taxes upon the Collector's roll. It is provided by sec. 97, that the Collector may, after demand, levy the taxes with costs by distress of the goods and chattels of the person who ought to pay the same, or of any goods or chattels in his possession, wherever the same may be found within the county, &c.; and by sec. 98, in the case of non-residents who have required their names to be entered on the roll, the Collector may make distress of any goods and chattels which he may find on the land. There is no doubt, therefore, that goods and chattels on the land, as in the case of non-resident lands, would be liable. But the difficulty of restraining the operation of the section to goods and chattels on the land as in the case of non-residents is, that that is only one kind of tax, and the act says the taxes shall be collected in the same manner and *subject* to the same conditions as *all* other taxes entered upon the roll. Now, upon the roll are the proper taxes of the party charged, which, under sec. 97, may be levied of any goods and chattels in his possession, *wherever the same may be found in the county*. The Court of Queen's Bench, however, have placed upon similar words, as used in the statute 27 Vic. cap. 19, from which this section is taken, the narrow construction of restricting the remedy as to goods and chattels on the land, as being more consistent with reason than the broader construction, which would work great hardships and do great injustice in individual cases (see *Warne* v. *Coulter*, 25 U. C. Q. B. 177); and the construction placed upon these words by the court is apparently sanctioned by the Legislature in the following section, which provides what the Collector shall do "if there shall not be sufficient distress upon any of the occupied lands in the preceding section named," &c.

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115. If there shall not be sufficient distress upon any of the occupied lands in the preceding section named, to satisfy the total amount of the taxes charged against the same, (*d*) as well for the arrears as for the taxes of the current year, (*e*) the Collector shall so return it in his Roll to the Treasurer of the Municipality, shewing the amount collected, if any, and the amount remaining unpaid, and stating the reason why payment has not been made. (*f*)

If there is not sufficient distress on such lands.

116. The Treasurer of each local Municipality shall, within fourteen days after the time appointed for the return and final settlement of the Collector's Roll, and before the eighth day of April in every year, (*g*) furnish the County Treasurer with a statement of all arrears of taxes and school-rates directed in the said Collector's Roll or by School Trustees to be collected, such return to contain a description of the lots or parcels of land, a statement of unpaid arrears of taxes, if any, on lands of non-residents, which have become occupied, as required by section one hundred and twelve of this Act, and generally such other information as the County Treasurer may require and demand, in order to enable him to ascertain the just tax chargeable upon any land in the Municipality for that year, and the County Treasurer shall not be bound to receive any such statement after the eighth day of April in each year. (*h*)

Statement of arrears to be returned by local Treasurer to County Treasurer and when.

(*d*) See note *c* to sec. 114.

(*e*) So far as taxes of "the current" year are concerned, it is clear that the collector is not restricted to a distress on the land, but may seize any goods or chattels in the possession of the party charged, in any part of the county. (See notes to sec. 97.)

(*f*) It is not said in what manner the collector is to appropriate the proceeds of a distress made on the land, when more than enough has been made to pay the taxes of the current year but not enough to pay that and the taxes under sec. 114, but it is presumed that he may in such case, first apply the money in the discharge of the taxes of the current year and throw the deficiency upon the special tax. (See note *a* to sec. 94.) He must under this section report to the local treasurer:

1. The amount collected, if any.
2. The amount remaining unpaid.

Stating the reason why payment has not been made.

Neglect of this duty may be summarily punished. (See sec. 118.)

(*g*) In the latter part of this section, it is provided that the County Treasurer shall not be bound to receive any such statement after the eighth day of April in each year. (See note *i* to sec. 50 and note *u* to sec. 60.)

(*h*) The return must contain:

1. A description of the lots or parcels of land.

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Liability of lands to sale if arrears are not paid; and when.

117. In case it shall be found by the statement directed by the last preceding section to be made to the County Treasurer, that the arrears of taxes upon the occupied lands of non-residents, directed by the one hundred and fifteenth section of this Act to be placed on the Collector's Roll, or any part thereof, remain in arrear, such lands shall be liable to be sold for such arrears and shall be included in the next or any ensuing list of lands to be sold by the County Treasurer under the provisions of the one hundred and twenty-ninth section of this Act, notwithstanding that the same may be occupied in the year when such sale takes place, and such arrears shall not again be placed upon the Collector's Roll for collection. (*i*)

Penalty of local Clerk neglecting his duties under preceding sections and on assessors so neglecting.

118. If the Clerk of any such Municipality shall neglect to preserve the said list of lands in arrears for taxes, furnished to him by the County Treasurer, or to furnish copies of such lists, as required to the Assessor or Assessors, or shall neglect to return to the County Treasurer a correct list of the lands which have come to be occupied, as required by the one hundred and fourteenth section of this Act, and a statement of the balances which may remain uncollected on any such lots, as required by the one hundred and fifteenth section of this Act; (*j*) or if any Assessor or Assessors shall neglect to examine such lands as are entered on each such list, and make returns in manner hereinbefore directed, (*k*) every Officer making such default shall, on summary conviction thereof

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2. A statement of unpaid arrears of taxes, if any, on lands of non-residents which have become occupied, as required by sec. 112.

And generally such other information as the County Treasurer may require and demand.

This information is to be furnished the County Treasurer to enable him to ascertain the just tax chargeable upon any land in the municipality for that year.

(*i*) The ordinary way of realizing taxes on non-resident lands, where the owners are not rated at their own request, is by sale of the lands. (Per Richards, J., in *Municipality of Berlin* v. *Grange*, 5 U. C. C. P. 211.) But in aid of this remedy, provision is made in the 114 and subsequent sections, for distress of goods and chattels on such lands, when subsequent to the accruing of the arrears, they become occupied. If the latter fail, the only course left for the County Treasurer, is to fall back upon the principal and ordinary remedy, and that is all that this section directs.

(*j*) The duty to preserve the list and to furnish copies thereof to the assessors, are both imposed by sec. 112.

(*k*) The duty of the assessors to examine the lands and to make return thereof, are also imposed by sec. 112. The form of oath is given in sec. 113.

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before any two Justices of the Peace having jurisdiction in the County in which such Municipality is situated, be liable to the penalties imposed by sections one hundred and seventy-six, one hundred and seventy-seven, and one hundred and seventy-eight of this Act; all fines so imposed to be recoverable by distress and sale of any goods and chattels of the party making default. (*l*)

How to be levied.

119. After the Collector's Roll has been returned to the Treasurer of the Local Municipality, no more money on account of the arrears then due shall be received by any officer of the Municipality to which the Roll relates. (*m*)

After such return local officers not to receive taxes.

120. The collection of the arrears shall thenceforth belong to the Treasurer of the County alone, (*n*) and he shall receive payment of such arrears, and of all taxes on lands of non-residents, and he shall give a receipt therefor specifying the amount paid, for what period, the description of the lot or parcel of land, and the date of payment, in accordance with the provisions of section one hundred and seventy-three of this Act. (*o*)

Collection of arrears to belong to Treasurer of County only.

(*l*) The fine under sec. 176, is a sum not exceeding $100, and the punishment under sec. 178, a fine not exceeding $200, and to imprisonment until the fine is paid or to imprisonment for a term not exceeding six months, or to both fine and imprisonment in the discretion of the court, and, under the section here annotated, though not according to the sections mentioned, the fines and penalties may be imposed on conviction before any two justices having jurisdiction in the county in which the municipality is situate.

(*m*) The collection thenceforth belongs to the Treasurer of the county alone (sec. 120), and any distress or other proceeding on the part of the local municipality for the recovery of the taxes, unless in cases coming under secs. 112 and 114 of this act, would be illegal. (*Holcomb* v. *Shaw*, 22 U. C. Q. B. 92; *Smith* v. *Shaw*, 8 U. C. L. J. 297.) It would seem that the roll should not only be returned by the Collector to the local Municipality, but that the latter should return it to the County Treasurer. (See sec. 123.)

(*n*) In cases of non-resident lands subsequently becoming occupied, he may make use of the officers of the local municipality in order if possible to make the amount of the taxes by distress of goods and chattels on the land. (See secs. 112 and 114, and notes thereto.)

(*o*) It having been declared that the collection of the arrears shall, after the return of the Collector's roll, belong to the Treasurer of the county alone, he and he alone is the proper person to receive payment of arrears on lands of non-residents.

The receipts which he may give should specify—

1. The amount paid;
2. For what purpose;

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The whole amount to be paid at once, unless the land is subdivided.

121. The Treasurer shall not receive any part of the tax charged against any parcel of land unless the whole arrears then due be paid, or satisfactory proof is produced of the previous payment, or erroneous charge of any portion thereof, but if satisfactory proof is adduced to him that any parcel of land on which taxes are due, has been subdivided, he may receive the proportionate amount of the tax chargeable upon any of the subdivisions, and leave the other subdivisions chargeable with the remainder, (*p*) and the Treasurer may, in his books, divide any piece or parcel of land which may have been returned to him in arrear for taxes, into as many parts as the necessities of the case may require. (*q*)

If demanded Treasurer to give a written statement of arrears.

122. The Treasurer shall, on demand, give to the owner of any land charged with arrears of taxes, a written statement of the arrears at that date, and he may charge twenty cents for the search on each separate lot or parcel not exceeding four, and for every additional ten lots, a further fee of twenty cents, but the Treasurer shall not make any charge for search to any person who forthwith pays the taxes. (*r*)

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3. The description of the lot or parcel of land;
4. The date of payment.

He is not in general bound to receive payment of part of the arrears, unless the whole be tendered. (Sec. 121.)

(*p*) The rule is not to receive part payment of arrears of taxes.

The exceptions created by this section are two:

1. If satisfactory proof be produced of the previous payment *or* erroneous charge of any part thereof.
2. If satisfactory proof is adduced that any parcel of land on which taxes are due, has been sub-divided.

The proof in each case is to be such as to satisfy the Treasurer, *i.e.*, be satisfactory *to him*. It is presumed that if the proof be reasonable the proof will be deemed by him to be satisfactory. It is not supposed that any public officer will act otherwise than reasonably in the discharge of any public duty cast upon him by virtue of his office. If the proof offered be a paper purporting to be a receipt of a collector, school trustee or other town, village or township officer, the Treasurer is not to accept such proof until he has received a report upon the same, from the Clerk of the municipality interested, certifying the correctness thereof. (Sec. 125, sub-sec. 2.)

(*q*) The receipt of a proportion of taxes because of a sub-division and in respect of a subdivided part, necessitates the duty upon the Treasurer of charging the remaining sub-divided parts with the remainder of the amount of taxes, and if convenient or necessary for that purpose that he should divide the entries of the parcel of land in his books, and he is here authorized to do so. (See *In re Secker and Paxton*, 22 U. C. Q. B. 118.)

(*r*) The Treasurer is not bound to submit to the demand of any person whether interested or not, requiring a statement of arrears of taxes

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Lands on which taxes remain unpaid to be entered in books kept for the purpose by the County Treasurer, &c.

Books to be made up and balanced yearly.

123. The Treasurer of every county shall keep a separate book for each local municipality, in which he shall enter all the lands in the municipality on which it appears from the returns made to him by the clerk and from the Collector's Roll returned to him, that there are any taxes unpaid, and the amounts so due; and he shall on the first day of May in every year, complete and balance his books by entering against every parcel of land, the arrears, if any, due at the last settlement, and the taxes of the preceding year which remain unpaid, and he shall ascertain and enter therein the total amount of arrears, if any, chargeable upon the land at that date. (*s*)

Proceedings where any land is found not to have been assessed in any year.

124. If at the yearly settlement to be made on the first day of May, (*a*) it appears to the Treasurer that any land liable to assessment has not been assessed, he shall report the same to the Clerk of the Municipality, (*b*) and the Clerk shall enter such land on the Collector's Roll of the current year, or on the Roll of Non-residents (as the case may be), as well as for the arrears omitted of the year preceding only (if any) as for the tax of the current year; and the valuation of such land

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on any particular parcel or parcels of land. But it is his duty to submit to the demand of the owner (or his agent which is the same thing) and to give him a written statement of the arrears to date, provided his fees for search (there being no fee for certificate or statement) be paid or tendered, or provided the person making the demand be authorized to do so, and forthwith pays the taxes.

(*s*) The duties of the Treasurer under this section are:

1. To keep a separate book for each local municipality.
2. To enter therein all the lands in the municipality, on which it appears from returns made to him by the Clerk *and* from the collector's roll returned to him, that there are any taxes unpaid.
3. To enter therein the accounts so due.
4. To complete and balance his books on the first day of May in every year. (See note *i* to sec. 50 and note *u* to sec. 60.)
5. To enter therein the total amount of arrears, if any, chargeable upon the lands at that date.

If at the yearly balance it appears that there are any arrears due upon any parcel of land, the Treasurer must add to the whole amount then due, eight per cent thereon. (Sec. 126)

The books when correctly kept are evidence of the land being five years in arrear, on ejectment brought for the recovery of the land by a vendee on a sale for taxes. (See *Hall* v. *Hill*, 22 U. C. Q. B. 578.)

(*a*) See note *s* to sec. 123.

(*b*) All land in Upper Canada, subject to few exceptions, is liable to be assessed. (See sec. 9, sub-secs. 1, 2, 3, 4, 5, 6, 7, 8, 9 & 10.)

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How land shall be valued.

Appeal from valuation.

so entered, shall be the average valuation of the three previous years, if assessed for the said three years, but if not so assessed, the Clerk shall require the Assessor or Assessors for the current year to value such lands, and it shall be the duty of the Assessor or Assessors to value such lands when required, and certify the valuation in writing to the Clerk. (*c*) The owners of such lands shall have the right to appeal to the Council at its next or some subsequent meeting after the taxes thereon have been demanded by the Collector, but within fourteen days after such demand, which demand shall be made by the Collector before the tenth day of November, and the Council shall hear and determine such appeal on some day not later than the first day of December. (*d*)

Treasurer to correct errors.

125. The County Treasurer may correct any clerical error which he himself discovers, from time to time, or which may be certified to him by the Clerk of any Municipality: (*e*)

As to pretended receipts, &c.

2. If any person produces to the Treasurer, in satisfaction of a tax, any paper purporting to be a receipt of a Collector, School Trustee, or other Town, Village or Township officer, he

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(*c*) The object of this section is to make subject to taxes land that ought to have been assessed, but which, from some cause, was not assessed. The procedure provided for the purpose is the best, under the circumstances, that could be devised to meet the exigencies of such a case. The Treasurer may himself at any time correct clerical errors. (See sec. 125.)

(*d*) The duties of the Court of Appeal are required to be performed on or before the 1st June. (Sec. 60.) But here, it will be observed, the appeal is not given to the Court of Appeal, but direct to the Council. The demand for payment of taxes must be made by the Collector before the 10th November, and the appeal must be made within fourteen days after demand, or it cannot be made at all.

(*e*) A rate-payer, from 1858 to 1861, inclusive, occupied as lessee a house and land adjoining on lot 24, part of which lot, in 1854, had been laid out by his landlord into village lots, and a plan of the sub-divisions filed in the Registry office. He had been regularly assessed, and had paid for the premises thus occupied by him, but the whole of lot 24 had, during these four years, been returned as non-resident. After the Treasurer had issued his warrant for sale to the Sheriff, he was applied to to correct the alleged mistake in the rolls, so as to except the part occupied by the ratepayer above mentioned from that returned, but refused to do more than allow the Sheriff to deduct the amount paid by the rate-payer. A certificate was presented to the Township Clerk for signature, to be addressed to the Treasurer, with a view of notifying him of certain errors in the mode of assessment of the lot number 24, but the Clerk declined to sign it, alleging that he did not think he would be justified in doing so. The Court of Queen's Bench, on an application for a mandamus, refused to interfere. (*In re Secker and Paxton*, 22 U. C. Q. B. 118.)

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shall not accept such proof until he has received a report upon the same from the Clerk of the Municipality interested, certifying the correctness thereof. (*f*)

126. If at the balance to be made on the first day of May in every year, (*g*) it appears that there are any arrears due upon any parcel of land, the Treasurer shall add to the whole amount then due eight per cent. thereon. (*h*)

Eight per cent to be added to arrears yearly.

127. Whenever the County Treasurer is satisfied that there is distress upon any lands of non-residents in arrear for taxes, (*i*) he shall issue a warrant under his hand and seal to the Collector of the local Municipality, (*ii*) who shall thereby be authorized to levy the amount due, upon any goods and chattels found upon the land, in the same manner and subject to the same provisions as are contained in the sections from section ninety-seven to section one hundren and one of this Act, with respect to distresses made by Collectors. (*j*)

If there be distress upon lands of non-residents, County Treasurer may authorize Collector to levy.

(*f*) See note *p* to sec. 121.

(*g*) See sec. 123.

(*h*) The addition of eight (formerly ten) per cent. is each year to be added to *the whole amount* (including previous additions of eight per cent.) *then due.* (*Gillespie et al.* v. *City of Hamilton*, 12 U. C. C. P. 426.)

(*i*) It is not made the duty of the Treasurer to search for a distress on lands; but if satisfied that there is a distress, he must issue a warrant of distress. In order, therefore, to render the Treasurer liable for not making a distress, it would be necessary to aver and prove that he had notice of the distress. (See *Foley* v. *Moodie*, 16 U. C. Q. B. 254.) The neglect of a Collector whose duty it was to search for distress, was held not to invalidate a sale subsequently made of the land for arrears that might in whole or in part have been satisfied by such distress. (*Allan* v. *Fisher*, 13 U. C. C. P. 63.) The old law was formerly otherwise, especially if it could be shown that there was a sufficient distress on the land at the time of the sale. (See *Dobbie* v. *Tully*, 10 U. C. C. P. 432.) But proving that there were a few pieces of timber on the lot, cut down by trespassers, and left by them to be prepared for market in a lot, or that some persons were in the habit of making sugar on the lot, leaving kettles and sap-troughs thereon, were held not sufficient evidence of a distress being on the land to invalidate the sale of it for taxes. (See *Stafford* v. *Williams*, 4 U. C. Q. B. 488; *Doe Upper* v. *Edwards*, 5 U. C. Q. B. 594; *Doe d. Powell* v. *Rorison*, 2 U. C. Q. B. 201; *Fraser* v. *Mattice et al.*, 19 U. C. Q. B. 150.) The old law as to the necessity of a distress, and the omission to distrain invalidating a sale, was apparently altered by the statute 13 & 14 Vic. cap. 67. (See *Hamilton et al.* v. *McDonald*, 22 U. C. Q. B. 136; *McDonell et al.* v. *McDonald*, 24 U. C. Q. B. 74.)

(*ii*) If the Treasurer be satisfied of the sufficiency of the distress, his duty to issue the warrant of distress appears to be imperative.

(*j*) See secs. 98, 99, 100 & 101, and notes thereto.

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From what period unpatented land shall be liable to taxation.

128. Unpatented land vested in or held by Her Majesty, which shall hereafter be sold or agreed to be sold to any person, or which shall be located as a free grant, shall be liable to taxation from the date of such sale or grant, (*k*) and any such land which has been already sold or agreed to be sold to any person, or has been located as a free grant, prior to the first day of January, one thousand eight hundred and sixty-three, (*l*) shall be held to have been liable to taxation since the first day of January, one thousand eight hundred and sixty-three, and all such lands shall be liable to taxation thenceforward under this Act, in the same way as other lands, whether any license of occupation, location ticket, certificate of sale, or receipt for money paid on such sale, has or has not been, or shall or shall not be issued, and (in the case of sale or agreement for sale by the Crown) whether any payment has or has not been, or shall or shall not be made thereon, and whether any part of the purchase money is or is not overdue and unpaid; (*m*) but such taxation shall not in any way affect the rights of Her Majesty in such lands. (*n*)

Rights of the Crown saved

When lands to be sold for taxes.

Arrears due for five years to be levied by warrant of the warden to the Treasurer.

129. Whenever a portion of a tax on any land has been due for and in the fifth year or for more than five years preceeding the current year, (*o*) the Treasurer of the County shall, unless otherwise directed by a by-law of the County Council, (*p*) submit to the Warden of such County a list in duplicate of all the lands liable under the provisions of this Act, to be sold for taxes, with the amount of arrears against each lot set opposite to the same; (*q*) and the Warden shall authenticate each of such lists by affixing thereto the seal of the Corporation, and his signature, (*r*) and one of such lists shall be deposited with

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(*k*) Land vested in Her Majesty the Queen is in general exempt from taxation (sec. 9, sub-sec. 1); but though not patented, if sold or agreed to be sold, or located as a free grant, the interest of the purchaser or locatee is liable to taxation and sale. (Sec. 140.)

(*l*) The 1st January, 1863, was the date fixed by the act 27 Vic. cap. 19, sec. 9, of which this is a re-enactment.

(*m*) This part of the section is intended to cover a defect pointed out in *Street* v. *The Corporation of the County of Kent*, 11 U. C. C. P. 255.

(*n*) See note *a* to sec. 140.

(*o*) See note *k* to sec. 111.

(*p*) The Council of a county, city or town, withdrawn from the jurisdiction of the county in which situate, may extend the time for payment of taxes beyond the term of five years. (Sec. 130.)

(*q*) This duty is made imperative, so far as the Treasurer is concerned.

(*r*) This is required in order to authenticate the list, and should be done by the Warden as directed, viz., "by affixing thereto the seal of the Corporation *and* his signature." Both are required.

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the Clerk of the County, and the other shall be returned to the Treasurer, with a warrant thereto annexed, under the hand of the Warden and the seal of the County, commanding him to levy upon the land for the arrears due thereon, with his costs; provided always, that where a warrant has been placed in the hands of the Sheriff or High Bailiff before the first day of January, one thousand eight hundred and sixty-seven, commanding him to collect arrears of taxes, he shall proceed with the collection thereof, under the provisions of the Acts in force before the passing of this Act; and in every case in which such collection is made by sale of any lands, the Sheriff or High Bailiff shall, in the event of the lands not being redeemed according to law, complete the sale by a deed of conveyance to the purchaser. (*s*)

Proviso as to warrants issued before 1st January, 1867, to Sheriff or High Bailiff.

130. The Council of a County, or of a City, or of a Town, withdrawn from the jurisdiction of a County (as the case may be), (*t*) shall have power to extend the time for the payment of taxes beyond the term of five years, by by-law passed for that purpose. (*u*)

County Council, &c., may extend the period for payment.

131. It shall not be the duty of the Treasurer of any County to make inquiry before effecting a sale of lands for taxes, to ascertain whether or not there is any distress upon the land, (*a*) nor shall he be bound to inquire into or form any opinion of the value of the land; (*b*) and if any tax in respect to any lands sold by the Treasurer after the passing of this Act, in pursuance of and under the authority thereof, shall have been due for the fifth year or more years preceding

Treasurer's duty on receiving warrant to sell.

(*s*) The direction of the warrant to sell, to the County Treasurer instead of the County Sheriff, is a new feature in the law. The warrant must be under the hand of the Warden and seal of the County. It must also have a duplicate list of the lands annexed to it. Compliance with this direction as to the form and contents of the warrant is, subject to the provisions of sec. 131 of this act, essential to the validity of any sale that may take place under it. (See *Hall* v. *Hill*, 22 U. C. Q. B. 578; S. C. 2 Er. & Ap. 569.) This act is not to interfere with the execution of warrants placed in the hands of a Sheriff or High Bailiff for execution, prior to the 1st January, 1867, who, in the event of making a sale thereunder, may complete the sale by a deed of conveyance to the purchaser.

(*t*) Cities and towns withdrawn from the jurisdiction of counties, are counties of themselves. (Municipal Act, sec. 356.)

(*u*) See note *k* to sec. 111.

(*a*) See note *i* to sec. 127.

(*b*) The contrary was held in *Henry* v. *Burness*, 8 Grant 345.

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Deed to be binding on all, if land not redeemed in one year.

the sale thereof, (*c*) and the same shall not be redeemed in one year after the said sale, such sale and the official deed to the purchaser of any such lands (provided the sale shall be openly and fairly conducted) shall be final and binding upon the former owners of the said lands and upon all persons claiming by, through or under them, it being intended by this Act that all owners of land shall be required to pay the arrears of taxes due thereon within the period of five years, or redeem the same within one year after the Treasurer's sale thereof. (*d*)

(*c*) See note *k* to sec. 111.

(*d*) The essentials to a valid sale now appear to be, that the land be subject to taxation, that the taxes have been in arrear for five years, that the taxes at the time of sale remain unpaid, and that the sale be openly and fairly conducted.

The *first* point is the liability of the land to taxation. This is, as it were, the foundation of the sale and all proceedings leading thereto and consequent thereon. If the land be exempt from taxation or otherwise not liable, the sale would be invalid. (See *Doe Bell* v. *Reaumore*, 3 O. S. 243; *Doe d. Bell* v. *Orr*, 5 O. S. 433; *Street* v. *The Corporation of the County of Kent*, 11 U. C. C. P. 255.) All land with certain exemptions is subject to taxation and to sale for taxes. (See sec. 9 and sub-secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 18.) If sold, agreed to be sold, or located as a free grant, the interest of the purchaser or locatee is liable to taxation and may be sold. (Secs. 108, 128, 140.)

The *second* point is, the taxes being in fact in arrear for the requisite period fixed by law. That, in the absence of a by-law of the county, city, town or municipal council, is five years. (See note *k* sec. 111.) If the land have not been in arrears for the requisite period, the sale would be invalid. (See *Doe d. Bell* v. *Reaumore*, 3 O. S. 243; *Munro et al.* v. *Grey*, 12 U. C. Q. B. 647; *Errington* v. *Dumble*, 8 U. C. C. P. 65; *Hall* v. *Hill*, 22 U. C. Q. B. 578; S. C. 2 Er. & Ap. 569.) In *Doe* v. *Reammore*, the rule was laid down that writs to sell must be grounded on the Treasurer's return to the Court of Quarter Sessions, showing the taxes to be in arrears for the requisite period. This decision was under the statute 6 Geo. IV., cap. 7, and has always been acted upon in construing that act. Upon this return, or as the statute termed it "account of all the lots in arrear for taxes" it was the duty of the Clerk of the Peace to make out a writ, directing the sheriff to levy. In 1850, the 6 Geo 4, cap. 7, was repealed by the 13 & 14 Vic. cap. 66. The cases of *Munro* v. *Grey* and *Errington* v. *Dumble*, were also founded on the 6 Geo. 4. The 13 & 14 Vic. cap. 66, was followed by the 16 Vic. cap. 182, under which *Hall* v. *Hill* was decided The production of the sheriff's books, or perhaps the list directed by sec. 129, or even the warrant itself with list annexed, would it is apprehended be *prima facie* sufficient to establish the fact of the arrears and the period of arrears. (See *Hall* v. *Hill*, 22 U. C. Q. B. 578.) If the land be improperly assessed during any of the years, it may be that such year would have to be excluded in the computation of the five years. (*Allan* v. *Fisher*, 13 U. C. C. P. 63) If the land be in fact proved to have been in arrear for the requisite period, a mistake in any of the

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132. The Treasurer shall not sell any lands which have not been included in the lists furnished by him to the clerks of the several Municipalities in the month of February pre- What lands only the Treasurer shall sell.

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documents affecting it, will be of no consequence. (*Doe d. Stata* v. *Smith*, 9 U. C. Q. B. 658.) But if the fact whether the land was in arrear for the requisite period be left doubtful, the sale would in all probability be held bad. (*Harbourn* v. *Bushey*, 7 U. C. C. P. 464.)

The *third* point is, that the taxes be unpaid at the time of sale. It is not enough that the taxes have been in arrears for five years, but the fact that the arrears are existing at the time of sale, that gives the right to sell. (See sec. 139.) So that if at any time before sale, the taxes be paid the sale would be invalid. (*Howe et ux.* v. *Thompson*, M. T. 6 Vic. M. S., R. & H. Dig., Taxes, 11.) But the payment to be effective must be, as against the sheriff's deed, be proved to have been made to some officer entitled to receive it at the time when paid. (*Doe d. Sherwood et al.* v. *Matthewon*, 9 U. C. Q. B. 321) and be proved beyond reasonable doubt. (*Macdonald* v. *Rowe*, 9 U. C. C. P. 76.) If voluntarily paid, the money cannot be recovered back. (*Austin* v. *The Corporation of the County of Simcoe*, 22 U. C. Q. B. 73; see also *Street* v. *The Corporation of the County of Simcoe*, 12 U. C. C. P. 284; S. C. 2 Er. & Ap. 211.)

The *fourth* and remaining point is, that the sale have been openly and fairly conducted. The law has ever required that those whose persons or property have been by misfortune or otherwise subjected to its process, shall be dealt with fairly and without oppression and with as little suffering and loss as possible, and it throws this duty upon the officer charged with the execution of the process. Taxes are at all times onerous and imposed merely from public necessity. It is the policy as well as the interest of the state, that they should bear as lightly as possible on individuals. It is the duty of persons whose business it is to collect such charges, to maintain this policy as far as in their power. (Per Vankoughnet, C., in *Massingberd* v. *Montague*, 9 Grant, 92; S. C. 8 U. C. L. J. 274.) If therefore an unlawful combination among purchasers, to purchase the land without competition, be shown, the sale will be declared void. (*Henry* v. *Burness*, 8 Grant, 345; S. C. 7 U. C. L. J. 43.) So where one of the sheriff's officers conducted the sale at which he knocked down, without any competition, to another officer of the sheriff, a lot of land worth about £350 for less than £7 10s., the sale was declared void. (*Massingberd* v. *Montague*, 9 Grant 92; S. C. 8 U. C. L. J. 274.) In such a case the person applying for equitable relief, must do equity and repay the purchase money and per centage, as though it were redemption money. (*Ib.*) Where a lot was put up for sale on 10th April, when an intending purchaser offered to take 29 acres and pay the taxes, but afterwards refused to carry out the purchase, and in the July following, at an adjourned sale, the same person purchased the 200 acres for the taxes upon a statement that he had already acquired a title to the land which he desired to confirm, and with a request not to oppose him, the sale was held illegal. (*Todd* v. *Werry et al.* 15 U. C. Q. B. 614.)

The right of redemption under ordinary circumstances, must be exercised within one year from the sale. (See sec. 149.)

Unless the deed be questioned on some of the foregoing grounds, it will be held final and binding on the former owner of the land and all

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ceding the sale (*e*) nor any of the lands which have been returned to him as being occupied under the provisions of the one hundred and fourteenth section of this Act, (*f*) except the lands, the arrears for which had been placed on the Collection Roll of the preceding year and again returned unpaid and still in arrears in consequence of insufficient distress being found on the lands. (*g*)

County Treasurer to prepare list of land to be sold and advertise in Gazette.

133. The County Treasurer shall prepare a copy of the list of lands to be sold, required by section one hundred and twenty-nine of this Act, and shall include therein in a separate column a statement of the proportion of costs chargeable on each lot for advertising, and for the commissions authorized by this Act to be paid to him, distinguishing lands as patented, unpatented, or under lease or license of occupation from the Crown, and shall cause such list to be published four weeks in the *Official Gazette* and once a week for thirteen weeks in some newspaper published within the county, or if none be so published, in some other newspaper published in some adjoining county. (*h*)

Notice to be given in such advertisement.

134. The advertisement shall contain a notification that unless the arrears and costs are sooner paid, he will proceed to sell the lands for the taxes, on a day and at a place named in the advertisement. (*i*)

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persons claiming under them. If not questioned in the cases of sales before this act, within four years after its passing, and in the case of sales after the act, within four years from the date of the deed, the deed is made valid and binding to all intents and purposes. (Sec. 156.)

(*e*) See sec. 111.

(*f*) See sec. 114 and notes thereto.

(*g*) See sec. 117.

(*h*) It was under the 18 & 14 Vic. cap. 67, held that the omission of the sheriff to advertise did not affect the validity of a sale for taxes, but should be treated merely as a direction of the statute which the officer was bound to observe at his peril. (*Jarvis* v. *Brooke*, 11 U. C. Q. B. 299.) Such is now unquestionably the law in the case of a sale by a sheriff under writ of execution. (*Jarvis* v. *Cayley*, 11 U. C. Q. B. 282; *Paterson* v. *Todd*, 24 U. C. Q. B. 296.) But in a case decided under the 16 Vic. cap. 182, it was held that an advertisement in a local paper was equally necessary with an advertisement in the *Official Gazette*, and for want of it the sale was held invalid. (*Williams* v. *Taylor*, 13 U. C. C. P. 219.) And in a case decided under Con. Stat. U. C. cap. 55, the Court of Queen's Bench in referring to *Williams* v. *Taylor*, said, "if it were necessary for the decision of this case, we should as at present advised, arrive at the same conclusion." (*Hall* v. *Hill*, 22 U. C. Q. B. 584.) But such an objection would not now, it is apprehend be of any avail as against a sale "openly and fairly conducted." (Sec. 131.)

(*i*) See note *h* to sec. 133.

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135. The day of sale shall be more than ninety-one days after the first publication of the list. (*j*) Time of sale

136 The Treasurer shall also post a notice similar to the said advertisement, (*k*) in some convenient and public place at the Court House of the County, (*l*) at least three weeks before the time of sale. (*m*) Notice to be posted up.

137. The Treasurer shall in each case add to the arrears published, his commission and the cost of publication. (*n*) Expenses to be added to the arrears.

138. If at any time appointed for the sale of the lands, no bidders appear, the Treasurer may adjourn the sale from time to time. (*o*) Adjourning sale if no bidders.

139. If the taxes have not been previously collected, or if no person appears to pay the same at the time and place appointed for the sale, (*p*) the Treasurer shall sell by public auction so much of the land as may be sufficient to discharge the taxes and all lawful charges incurred in and about the sale and the collection of the taxes; selling in preference such part as he may consider best for the owner to sell first. (*q*) In Mode in which lands shall be sold by the Treasurer.

(*j*) Both the day of the first publication and the day of sale must be excluded in the computation of the ninety-one days, in other words, there must be between these two events, ninety-one full days. See *Mitchell* v. *Foster*, 9 Dowl. P. C. 527; *The King* v. *Justices of Shropshire*, 8 A. & E. 173.

(*k*) See sec. 133 and note thereto.

(*l*) The place is to be selected by the Treasurer subject to this direction, that it is to be a convenient and public place, and a place at the Court House.

(*m*) See note *j* to sec. 135.

(*n*) So that a peason intending to pay the arrears, may by inspection of the advertisement and without further or other inquiry, ascertain how much he must pay to prevent the sale. The amount of taxes stated in the advertisement is in all cases to be held the correct amount. (Sec. 139.)

(*o*) Even though bidders appear, if the Treasurer discover a combination among them or has reason to be believe that a combination exists, to prevent fair competition, it seems to be his duty to adjourn. (*Henry* v. *Burness*, 8 Grant, 345.)

(*p*) See note *d* to sec. 131.

(*q*) Where lots are included in one grant, but described by separate numbers, a portion of each lot must be sold to pay the taxes thereon. (*Munro et al.* v. *Grey*, 12 U. C. Q. B. 647.) A grant having issued for lot number eight and three-quarters of lot number seven, the latter of which was not returned by the Government to the District Treasurer, as described, for grant, and the taxes on the whole of the grant having

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offering such lands for sale it shall not be necessary to describe particularly the portion of the lot which shall be sold, but it shall be sufficient to say that he will sell so much of the lot as shall be necessary to secure the payment of the taxes due: (*r*) the amount of taxes stated in the Treasurer's advertisement shall in all cases be held to be the correct amount due: (*s*)

If the land does not sell for full amount of taxes.

2. If the Treasurer fails at such sale to sell any land for the full amount of arrears of taxes due, he shall, at such sale, give notice that he will, at an adjourned sale, on a day to be named, sell such lands for any sum he can realize, and shall accept such sum as full payment of such arrears of taxes; (*t*) but the

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been paid, the Treasurer credited it to the *west* three quarters, and returned the *east* quarter as in arrear for taxes; held, that the taxes having been paid on all the land in the grant, the sale of the east quarter was illegal. (*Peck* v. *Munro*, 4 U. C. C. P. 363.) Lot 18 and the west half of lot 19, containing together two hundred acres, were granted to B. in one grant, and in the same year the east part of lot 19, described as containing one hundred and fifty-six acres, was granted to one S. B.'s land, being in arrear for the requisite period, was returned to the Treasurer as lot 18 and the west part of lot 19 (two hundred acres); and the Sheriff, in 1848, sold and conveyed one hundred and thirty-five acres of lot 19, which included part of the land granted to S. The sale was held illegal. (*McDonald* v. *Robillard*, 23 U. C. Q. B. 105.) It was held that the sale could not be upheld even as to that portion granted to B.; for lot 18 and the west part of lot 19 should each have been separately charged and sold for arrears. (*Ib.*) The east and west halves of lot 1, each containing one hundred acres, were granted by the Crown at different times and to different persons. The taxes being in arrear, lots 1 and 2 (four hundred acres) were returned as in arrear for 6*l.* 10*s.* taxes, without distinguishing that one portion of the taxes was on lot 1, and the remainder on lot 2, or upon the separate halves of lot 1. The Sheriff put up and sold the whole of lot 1 for the sum, at 3*l.* 12*s.* 6*d.*, being half the taxes on the whole, and 7*s.* 6*d.* for expenses. Held, the sale was void. (*Ridout et al.* v. *Ketchum*, 5 U. C. C. P. 50). The sale was held void, because a portion of the east half had been sold for taxes a portion whereof had accrued on the west half, and there were no means of apportionment. (*Ib.*) So where the north and south half of a lot of land were assessed separately, and different amounts charged against each half-lot, which amounts were afterwards added together and charged against the whole lot, and a portion of the whole lot sold for the combined amounts, the sale was held illegal. (*Laughtenborough* v. *McLean*, 14 U. C. C. P. 175; see also *Doe d. McGill* v. *Langton*, 9 U. C. Q. B. 98.)

(*r*) The contrary was held in *Knaggs* v. *Ledyard*, 12 Grant, 320; (now in appeal) and the law in consequence here amended.

(*s*) See note *n* to sec. 137.

(*t*) It would seem that the Sheriff may sue a purchaser for the amount of taxes, but in such an action it should be expressly averred that the defendant promised to pay for the land and accept a certificate within a reasonable time. (*Jarvis* v. *Cayley*, 11 U. C. Q. B. 282.) *Quære*, is

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owner of any land so sold shall not be at liberty to redeem the same, except upon payment to the County Treasurer of the full amount of taxes due, together with the expenses of sale; (*u*) and the Treasurer shall account to the local Municipality for the full amount of taxes that shall be paid. (*v*)

If the Treasurer sells any land the fee of which is in the Crown, he shall only sell the interest of lessee or locatee.

140. If the Treasurer sells any interest in land of which the fee is in the Crown, he shall only sell the interest therein of the lessee or locatee, and it shall be so distinctly expressed in the conveyance to be made by the Treasurer and Warden, and such conveyance shall give the purchaser the same rights in respect of the land as the original lessee or locatee enjoyed, and shall be valid, without requiring the assent of the Commissioner of Crown Lands. (*a*)

If purchaser fails to pay purchase money.

141. If the purchaser of any parcel of land fails immediately to pay to the Treasurer the amount of the purchase money, the Treasurer shall forthwith again put up the property for sale. (*b*)

Treasurer selling to give pur-

142. The Treasurer, after selling any land for taxes, shall give a certificate under his hand to the purchaser, (*c*) stating

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such a sale within the Statute of Frauds? (See *Mingaye* v. *Corbett*, 14 U. C. C. P. 557.) The Treasurer is in no way responsible for the title to the land sold. (*Austin* v. *The Corporation of the County of Simcoe*, 22 U. C. Q. B. 73.)

(*u*) See sec. 149.

(*v*) His commission and expenses are independent of the amount of taxes.

(*a*) Land vested in the Queen is exempt from taxation. (Sec. 9, subsec. 1) But where land is leased, sold or agreed to be sold by the Crown, or located as a free grant, the interest of the purchaser or locatee is liable to taxation. (Sec. 128.) Being liable to taxation, it is liable to sale, but the sale of course only passes the rights in respect to the land which the original lessee or locatee enjoyed. Such a sale, when followed by a deed, would, however, prevail against a patent subsequently issued to the original lessee or locatee, or a person claiming under him. (*Ryckman* v. *Van Voltenburgh*, 6 U. C. C. P. 385; *Charles* v. *Dulmage*, 14 U. C. Q. B. 585.)

(*b*) It has been held that a Sheriff who sold land for taxes might maintain an action for the price (see note *t* to sec. 139); but notwithstanding, it would be more prudent for Treasurers, where the purchase money is not forthwith paid, to avail themselves of this section.

(*c*) The certificate must—

1. State whether the whole or part, and if part, what part, of the land has been sold.
2. State what interest therein has been sold.
3. Describe the land sold.

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Purchaser a certificate of land sold.

distinctly what part of the land, and what interest therein, (*d*) have been so sold, or stating that the whole lot or estate has been so sold, and describing the same, and also stating the quantity of land, (*e*) the sum for which it has been sold, and the expenses of sale, and further, stating that a deed conveying the same to the purchaser or his assigns, according to the nature of the estate or interest sold, with reference to the one hundred and thirty-ninth and one hundred and fortieth sections of this Act, (*f*) will be executed by the Treasurer and Warden on his or their demand, at any time after the expiration of one year from the date of the certificate, if the land be not previously redeemed. (*g*)

Purchaser of lands sold for taxes to be deemed owners thereof, for certain purposes, on receipt of Treasurer's certificate.

143. The purchaser shall, on receipt of the Treasurer's certificate of sale, become the owner of the land, so far as to have all necessary rights of action and powers for protecting the same from spoliation or waste, until the expiration of the term during which the land may be redeemed; but he shall not knowingly permit any person to cut timber growing upon the land, or otherwise injure the land, nor shall he do so himself, but he may use the land without deteriorating its value; provided that the purchaser shall not be liable for damage done without his knowledge to the property during the time the certificate is in force. (*h*)

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4. State the quantity sold.
5. State the sum for which it was sold.
6. State the expenses of sale, including commission. (See sec. 146.)
7. State that a deed conveying the same to the purchaser or his assigns will be executed on demand at any time after the expiration of one year from date, if land not previously redeemed. (See sec. 150.)

(*d*) See sec. 140, and notes thereto.

(*e*) See *Knaggs* v. *Ledyard*, 12 Grant, 320, and note ✓ to sec. 139.

(*f*) See secs. 139 & 140, and notes thereto.

(*g*) See sec. 149.

(*h*) The certificate confers, as it were, a qualified ownership on the purchaser. He becomes the owner so far as to have all necessary rights of action, and powers for protecting the land from spoliation and waste. He is not knowingly to permit any person to cut timber growing upon the land; nor can he himself cut timber on the land, or otherwise injure it. But he may use the land, so long as he does not deteriorate its value. If he injure the land, or knowingly permit it to be injured, no doubt he would be responsible to the owner in the event of the land being redeemed. But it is expressly declared that he is not to be held responsible for damage done without his knowledge. His rights cease so soon as the redemption money has been tendered to the Treasurer. (Sec. 144.)

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Effect of tender of arrears, &c.

144. From the time of a tender to the Treasurer of the full amount of redemption money required by this Act, the said purchaser shall cease to have any further right in or to the land in question. (*i*)

Treasurer's commission.

145. Every Treasurer shall be entitled to two and one-half per cent. commission upon the sums collected by him as aforesaid (*j*)

Fees, &c., on sales of land.

146. Whenever land is sold by a Treasurer according to the provisions of the one hundred and thirty-third and following sections of this Act, he may add the commission and costs which he is hereby authorized to charge for the services above mentioned, to the amount of arrears on those lands in respect of which such services have been severally performed, (*k*) and in every case he shall give a statement in detail with each certificate of sale, of the arrears and costs incurred. (*l*)

Expenses of search in Registrar's office, for description, &c.

147. The Treasurer shall in all Deeds given for land sold at such sale, give a description of the part sold with sufficient certainty, and if less than a whole lot, then by such a general description as may enable a Surveyor to lay off the piece sold on the ground, he may make search, if necessary, in the Registry Office, to ascertain the description and boundaries of the whole parcel, and he may also obtain a Surveyor's description of such lots, to be taken from the Registry Office or the Government maps, where a full description cannot otherwise be obtained, such Surveyor's fee not to exceed one dollar; the charges so incurred shall be included in the account and paid by the purchaser of the land sold. (*m*)

(*i*) The rights of the purchaser are described in note *h* to the preceding section. It is here declared that these rights shall cease "from the time of a tender to the Treasurer of the full amount of the redemption money required by this act," but no provision is made for communicating the fact of such tender to the purchaser.

(*j*) The commission is "a lawful charge," within the meaning of sec. 139, so as to entitle the Treasurer to sell for it as well as the taxes in arrear. (See sec. 146.)

(*k*) The commission is in the nature of poundage, to be levied over and above the amount of taxes, and the Treasurer is only entitled to it when he has made the money. (See *Buchanan* v. *Frank*, 15 U. C. C. P. 196, S. C., 1 U. C. L. J., N. S., 124.)

(*l*) See note *e* to sec. 142.

(*m*) The method prescribed by 6 Geo. IV., cap. 7, sec. 13, was, to begin at the front angle of the lot on that side whence the lots are numbered, and measure backwards, taking a proportion of the width, corresponding in quantity with the proportion of the particular

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Treasurer entitled to no other fees.

148. Except as before provided, the Treasurer shall not be entitled to any other fees or emoluments whatever for any services rendered by him relating to the collection of arrears of taxes on lands. (*n*)

Owners may within one year, redeem estate sold by paying purchase money and 10 per cent. thereon.

149. The owner of any land which may hereafter be sold for non-payment of arrears of taxes, or his heirs, executors, administrators or assigns or any other person (*o*) may at any time within one year from the day of sale, exclusive of that day, (*p*) redeem the estate sold by paying or tendering to the

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lot in regard to its length and breadth, according to the quantity required to make the sum demanded." A deed thereunder, of "thirty acres of lot, &c., to be measured according to the statute," was held to contain a sufficient description. (*Fraser* v. *Mattice et al.* 19 U. C. Q. B. 150.) But a description as "twenty-five acres of lot, &c." without more was held insufficient. (*Cayley et al.* v. *Foster*, 25 U. C. Q. B. 405.) So where the deed under the 6 Geo. 4, of 120 acres of a lot of land contained two descriptions, the first a description by metes and bounds, which was not in accordance with the statute, and the other a general description in accordance with the statute, the latter was held to govern. (*McIntyre* v. *The Great Western Railway Company*, 17 U. C. Q. B. 118.) But the statute 13 & 14 Vic. cap. 67, which succeeded the 6 Geo. IV., and repealed it, required a description by metes and bounds, and a deed since that statute of land sold under it not containing a description by metes and bounds, was held invalid. (*McDonell et al.* v. *McDonald*, 24 U. C. Q. B 74.) This section requires "a description of the part sold *with sufficient certainty.*" This in the same section is defined as being "*such a general description as may enable a surveyor to lay off the piece sold on the ground.*" A description by metes, bounds and courses having relation to the boundaries and courses of the original lot, would be the best description. It would be prudent for the Treasurer in all cases, before making his deed, to obtain a surveyor's description of the piece sold. This no doubt would be sufficient to enable the same, if not any surveyor to lay it off on the ground. Such a description could be made out by an examination of the boundaries of the whole lot, and the examination, if necessary, of the Registry Office. The government maps may be examined, where a full description cannot otherwise be obtained. Allowance is made by the section for a surveyor's fee not to exceed $1, to be included in the Treasurer's account and paid by the purchaser.

(*n*) It is a general principle that every fee to a public officer must have a legal origin (*Askin* v. *The London District Council*, 1 U. C. Q.B. 292) and where a statute allows certain specified fees to a public officer, none others are in general allowed. (See *Hooker et al.* v. *Gurnett*, 16 U. C. Q. B. 180; *In re Davidson and the Court of Quarter Sessions of the County of Waterloo*, 22 U. C. Q. B. 406.)

(*o*) The right to redeem is given to the owner of the land or his heirs, executors or administrators, or to any other person, whether claiming title or not. Such was the law before the passing of this act. (*Boulton* v. *Rutan*, 2 O. S. 362; *Gilchrist* v. *Tobin*, 7 U. C. C. P. 141.)

(*p*) The time for redemption is "any time within one year from

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County Treasurer, (*q*) for the use and benefit of the purchaser or his legal representatives, (*r*) the sum paid by him, together with ten per cent. thereon, (*s*) and the Treasurer shall give to the party paying such redemption money, a receipt, stating the sum paid and the object of payment, and such receipt shall be evidence of the redemption. (*t*)

Deed of sale, if not redeemed.

150. If the land be not redeemed within the period so allowed for its redemption, being one year, exclusive of the day of sale as aforesaid, (*a*) then, on the demand of the purchaser, or his assigns, or other legal representative, at any time afterwards, and on payment of one dollar, the Treasurer shall prepare and execute with the Warden and deliver to him or them a Deed in duplicate of the land sold. (*b*)

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the day of sale, exclusive of that day." Where the sale took place on the 7th October, 1840, payment of the redemption money on 8th October, 1841, was held too late. (*Proudfoot* v. *Bush*, 12 U. C. C. P. 52.) But payment on 7th October, 1841, would have been sufficient. (*Ib.*)

(*q*) So long as the money is tendered or substantially paid within the time limited, the statute is satisfied. (See *Allan* v. *Hamilton*, 23 U. C. Q. B. 109.)

(*r*) When the redemption money is paid, it becomes the money of the purchaser, and not of the municipality (*Wilson* v. *Huron and Bruce*, 8 U. C. L. J. 131; *Boulton* v. *York and Peel*, 25 U. C. Q. B. 21) and all rights of the purchaser in regard to the land cease from the time the money is paid or tendered to the Treasurer. (Sec. 144.)

(*s*) Where the purchaser, after the time for redemption is past, succeeds in equity in having the sale avoided, he will be made to do equity and pay the purchase money and ten per cent. thereon. (*Massingberd* v. *Montague*, 9 Grant 92.)

(*t*) The receipt must state:

1. The sum paid.
2. The object of the payment.

And when these things are stated in it, the receipt is made evidence of the redemption; and so long as the money is substantially paid within the time limited, the statute is satisfied. (*Allan* v. *Hamilton*, 23 U. C. Q. B. 109.)

(*a*) See note *p* to sec. 149.

(*b*) On the demand of the purchaser, &c., and on payment of one dollar, it is incumbent on the Treasurer to prepare and execute (with the Warden) and deliver a deed in duplicate of the land sold. If he refuse to comply, an action will lie against him, at the suit of the purchaser, for the recovery of damages. (See *Spafford* v. *Sherwood*, 3 O. S. 441; see also *Boulton* v. *Rutan*, 2 O. S. 362.) The deed may be in the form mentioned in schedule B to this act, and shall have the effect mentioned in sec. 151. The deed may be demanded by an assignee of the purchaser. (See *Doe Bell* v. *Orr*, 5 O. S. 433.)

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Contents of deed, and effect thereof. Form B.

151. Such Deed shall be in the form or to the same effect as in schedule B, (*c*) and shall state the date and cause of the sale, and the price, and shall describe the land according to the provisions of section one hundred and forty-seven of this Act, (*d*) and shall have the effect of vesting the land in the purchaser or his heirs and assigns, or other legal representatives, in fee simple or otherwise, according to the nature of the estate or interest sold, (*e*) and no such Deed shall be invalid for any error or miscalculation in the amount of taxes or interest thereon in arrear, or any error in describing the land as "patented or unpatented," or held under a license of occupation. (*f*)

Registration of deed.

152. The Registrar or Deputy Registrar of the County in which the lands are situated, upon production of the duplicate Deed, shall enter the said instrument in the Registry book, and give a certificate of such entry and registration in accordance with the Act respecting Registrars and Registry Offices in Upper Canada, chapter twenty-four of the twenty-ninth Victoria. (*g*)

(*c*) Whenever the Legislature provides a form of a deed or other conveyance, that form should be as nearly as possible followed.

(*d*) The deed must *state*,

1. The date and cause of the sale.
2. The price.

And describe the land in accordance with the provisions of section 147, which see, and notes thereto.

(*e*) The form of the deed is one thing; its effect another. It is declared that the deed *shall* be in the form given, and when in such form *shall* have the effect of vesting the land in the purchaser in fee simple or otherwise, according to the estate or interest sold. (See sec. 140, and notes thereto.) It is not declared, as was declared in Con. Stat. U. C. cap. 55, sec. 150, that the deed shall vest the land in the purchaser, "free and clear of all charges and incumbrances thereon;" but, considering that the taxes accrued on any land are by sec. 108 made a special lien thereon, having preference over all claims, liens, privileges or incumbrances to any party except the Crown, it is reasonable to intend that it shall convey the land free of incumbrances.

(*f*) In other words, the deed, notwithstanding errors or miscalculations such as specified, shall be valid. (See further, as to the binding effect of the deed, secs. 131 & 156, and notes thereto.)

(*g*) The provisions of the Registry Act are as much applicable to deeds of this kind as any other deeds. (See *Doe Brennan* v. *O'Neill*, 4 U.C. Q.B. 8.) But no proof of execution is apparently necessary in order to satisfy the Registrar. He is, "*upon production* of the duplicate deed, to enter the instrument in the Registry book." He is bound to give a certificate of the entry and registration. Special provision is also by

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153. As respects land sold for taxes before the first day of January, one thousand eight hundred and fifty-one, on the receipt by the Registrar of the proper County or place, of a certificate of the sale to the purchaser under the hand and seal of office of the Sheriff, stating the name of the purchaser, the sum paid, the number of acres, and the estate or interest sold, the lot or tract of which the same forms part, and the date of the Sheriff's conveyance to the purchaser, his heirs, executors, administrators or assigns, and on production of the conveyance from the Sheriff to the purchaser, his heirs, executors, administrators or assigns, such Registrar shall register any Sheriff's deed of land sold for taxes before the first day of January, one thousand eight hundred and fifty-one, and the mode of such registry shall be the entering on record a transcript of such deed of conveyance. (*h*)

On what certificate Registrars of Counties to register Sheriff's deeds of lands sold for taxes before 1851.

154. As respects land sold for taxes since the first day of January, one thousand eight hundred and fifty-one, and prior to the first day of January, one thousand eight hundred and sixty-six, the Sheriff shall also give the purchaser or his assigns, or other legal representatives, a certificate under his hand and seal of office of the execution of the Deed, containing the particulars in the last section mentioned; (*i*) and such certificate, for the purpose of registration in the Registry Office of the proper County of any deed of land sold for taxes since the first of January, one thousand eight hundred and fifty-one, shall be deemed a memorial thereof, and the Deed shall be registered, and a certificate of the registry thereof shall be granted by the Registrar on production to him of the Deed and certi-

The Sheriff to give certificate of execution of conveyances since the 1st January, 1851, for registration.

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this act made for the registration of deeds of land sold before the 1st January, 1851 (sec. 153), or sold between the 1st January, 1851, and prior to the 1st January, 1866. (Sec. 154.)

(*h*) Deeds of land sold under this act are to be registered on mere production of the duplicate. (Sec. 152.) But where the sales took place before the 1st January, 1851, a certificate under the hand and seal of office of the Sheriff is in addition required. Such certificate must state,

1. The name of the purchaser;
2. The sum paid;
3. The number of acres, and the estate or interest sold;
4. The lot or tract of land of which the same forms part;
5. The date of the Sheriff's conveyance to the purchaser.

A sheriff has not in general power to execute a deed of land sold for taxes, after the statute which authorized the sale has been repealed. (See *Bryant et al.* v. *Hill*, 23 U. C. Q. B. 96; *McDonald* v. *McDonell*, 24 U. C. Q. B. 424; see also *Weegan* v. *McDiarmid*, 12 U. C. C. P. 499.)

(*i*) See note *h* to sec. 152.

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ficate, without further proof; (*j*) and the Registrar shall, for the registry and certificate thereof, be entitled to seventy cents and no more. (*k*)

Treasurer to enter in a book description of lands conveyed to purchaser by him.

155. The Treasurer shall enter in a book, which the County Council shall furnish, a full description of every parcel of land conveyed by him to purchasers for arrears of taxes, with an index thereto, and such book, after such entries have been made therein, shall, together with all copies of Collector's Rolls and other documents relating to non-resident lands, be by him kept amongst the records of the County. (*l*)

Deed valid against all parties if not questioned within a certain time.

156. Whenever lands shall have been or may be hereafter sold for arrears of taxes, and the Sheriff or Treasurer (as the case may be) shall have given a deed for the same, such deed shall be to all intents and purposes valid and binding, except as against the Crown if the same has not been questioned before some Court of competent jurisdiction by some person interested in the land so sold, within four years after the passing of this Act, when the land was sold and a deed given by the Sheriff before the passing of this Act, or within four years from the giving of such deed, when such sale shall take place or deed be given after the passing of this Act. (*m*)

Non-resident Land Fund

157. The Council may by by-law direct that all the moneys received by the County Treasurer on account of taxes on non-

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(*j*) See same note.

(*k*) See note *s* to sec. 148.

(*l*) Entries made in such a book, as to the particulars mentioned, might, in the event of the death of the Registrar, be evidence of the facts therein contained.

(*m*) There is a long list of cases reported in the Queen's Bench, Common Pleas, and Chancery Reports, in which sales for taxes have proved ineffectual, owing to the want of strict attention to the language of the statutes under which the sales took place, on the part of the officers required to carry the law into execution. Such a state of things was animadverted upon by the present Chief Justice of Upper Canada, in *McDonell* v. *McDonald* (24 U. C. Q. B. 80). The Legislature, in order to secure titles to land, interfered by enacting a species of Statute of Limitations, applicable to such cases (29 Vic. c 26), which is here in part re-enacted. If the deed have been given before the passing of this act, and not questioned before some Court of competent jurisdiction by some person interested in the land sold within four years from the passing of this act, the deed is made valid and binding to all intents and purposes. So, if given after the passing of this act, it will, unless questioned in like manner within four years from its date, have a like effect. As to the grounds on which a treasurer's deed, under ordinary circumstances, may be questioned in court, see note *d* to sec. 131.

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resident lands, shall be paid at stated periods to the several local Municipalities to which such taxes were due, or shall constitute a distinct and separate fund, to be called the "Non-resident Land Fund" of such County. (*n*)

established in each County and of what it shall consist.

158. The Treasurer shall, when such fund may have been created, open an account for each Local Municipality with the said fund. (*o*)

Treasurer to open an account for.

159. If two or more Local Municipalities having been united for municipal purposes, be afterwards disunited, (*oo*) or if a Municipality or part of a Municipality be afterwards added to or detached from any County, or to or from any other Municipality, (*p*) the Treasurer shall make corresponding alterations in his books, so that arrears due on account of any parcel or lot of land at the date of the alteration shall be placed to the credit of the Municipality, within which the land after such alteration is situate; and if a union of Counties is about to be dissolved, (*q*) all the taxes on non-residents' land imposed by by-laws of the Provisional Council of the Junior County, shall be returned to and collected by the Treasurer of the United Counties, and not by the Provisional Treasurer,

Counties united and afterwards disunited.

If any union be about to be dissolved.

(*n*) The Treasurer of the county is the person on whom the law throws the duty of collecting such taxes as are shown to be in arrear by the Non-resident rolls and by the Collectors' rolls, received by him from the several townships, after all efforts have failed to collect in the townships, in consequence of the owner being a non-resident, or there being no sufficient distress on the land. (Per McLean, C. J., in *Austin* v. *The Corporation of the County of Simcoe*, 22 U. C. Q. B. 75.) All money received by him on account of taxes of non-residents may, either under by-law of the County Council, be at once distributed among the several local municipalities to which the taxes are due, or constitute a fund known as the "Non-resident Land Fund." Though subject, for certain purposes, to the control of the County Council, who may issue debentures on the credit of it (secs. 164 & 165), it is in no sense the money of the Council. (*Wilson* v. *The Corporation of the United Counties of Huron and Bruce*, 8 U. C. L. J. 135, 136; *Austin* v. *The Corporation of the County of Simcoe*, 22 U. C. Q. B. 73; *Boulton* v. *The Corporation of the United Counties of York and Peel*, 25 U. C. Q. B. 21.) The Treasurer must, when a fund has been created, open an account for each local municipality with the Fund (sec. 158); and in the event of a union of local municipalities being afterwards dissolved, must open an account with each. (Sec. 159). He is not required to keep an account of the several distinct rates. (Sec. 161.)

(*o*) See note *n* to sec. 157.

(*oo*) See Municipal Act, secs. 28, 29.

(*p*) See Municipal Act, secs. 30, 31.

(*q*) See note *n* to sec. 157.

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and the Treasurer of the United Counties shall open an account forthwith for the Junior County with the Non-Resident Land Fund. (*r*)

New municipalities partly in one County and partly in another.

160. In cases where a new Municipality shall be formed partly from two or more Municipalities situate in different Counties, the collection of non-resident taxes due at the time of formation, shall remain in the hands of the Treasurer of the respective Counties formerly having jurisdiction over the respective portions of territory forming the new Municipality, and the respective Treasurers shall keep a separate account of such moneys, and pay the same to the new Municipality; and where a new Municipality shall be formed from two or more Municipalities situate in any one County, the Treasurer shall, in like manner, keep a separate account for such new Municipality. (*s*)

All arrears to form one charge upon the lands subject to them, &c.

161. The Treasurer of the County shall not be required to keep a separate account of the several distinct rates which may be charged on lands, but all arrears, from whatever rates arising, shall be taken together and form one charge on the land. (*t*)

Deficiencies in certain taxes to be supplied by the Municipality.

162. Every Local Municipal Council in paying over any school or local rate, or its share of any County rate or of any other tax or rate lawfully imposed for Provincial or local purposes, shall supply, out of the general funds of the Municipality, any deficiency arising from the non-payment of the taxes, (*u*) but shall not be held answerable for any deficiency arising from abatements of, or inability to collect the tax on personal property. (*v*)

(*r*) *Non-Resident Land*, see note *n* to sec. 157.

(*s*) See Municipal Act, secs. 32, 33.

(*t*) The several rates are only needed for the purposes of the local municipality and for distribution by it to the several purposes for which the money is raised. The local municipality often finds it necessary to advance out of its general funds, moneys charged against non-resident lands, and await the collection thereof by the County Treasurer (sec. 162) and when the money is received from the County Treasurer who knows nothing of the several rates, it may be applied to make good the advance out of the general funds of the local municipality, and forms part of its general funds. (Sec. 163.)

(*u*) See note *t* to sec. 161.

(*v*) Inability to collect taxes on real estate, is not mentioned, and where the local municipality in anticipation of such taxes being collected, makes advances, the local municipality must apparently bear the loss of inability, if any, to realize on such land.

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163. All sums which may at any time be paid to a Municipality out of the Non-Resident Land Fund of the County, shall form part of the general funds of such Municipality. (*w*) Money from Land Fund how appropriated.

164. The Council of the County may from time to time, by by-law, authorize the warden to issue, under the Corporate Seal, upon the credit of the Non-resident Land Fund, Debentures payable not later than eight years after the date thereof, and for sums not less than one hundred dollars each, so that the whole of the debentures at any time issued and unpaid do not exceed two-thirds of all the arrears then due and accruing upon the lands in the County, together with such other sums as may be in the Treasurer's hands, or otherwise invested to the credit of the said fund; (*o*) all Debentures issued by the County shall be in the exclusive custody of the Treasurer, who shall be responsible for their safety until their proceeds are deposited with him. (*p*) Debentures may be issued on the credit of the non-resident Land Fund. Who to have charge of them.

165. Such debentures shall be negotiated by the Warden and Treasurer of the County, and the proceeds shall be paid into the said fund, and the interest on the said debentures, and the principal when due, shall be payable out of such fund; Provided always that the purchaser shall not be bound to see to the application of the purchase money, or be held responsible for the non-application thereof. (*q*) By whom to be negotiated. Proviso.

166. If at any time there be not, in the Non-resident Land Fund, where such Fund may have been created, money sufficient to pay the interest upon a Debenture or to redeem the same when due, such interest or Debenture shall be payable out of the general County funds, (*r*) and the payment thereof Payment of interest on such debentures provided for.

(*w*) See note *t* to sec. 161.

(*o*) Debentures when regularly issued, are transferable by delivery (Municipal Act sec. 214) or by indorsement (*Ib.* sec. 215.)

(*p*) The Treasurer being especially and peculiarly the officer entrusted with the collection of the money that constitutes the fund. (See note *n* to sec. 157.)

(*q*) The fund is intended to meet in advance the wants of the local municipalities, and not in any way to be a source of revenue or gain to the corporation of the county. (See note *u* to sec. 157 and sec. 167.) But it is very properly here provided, that the purchaser of a debenture shall not be bound to see to the application of the purchase money or be held responsible for the non-application thereof.

(*r*) The debenture, though issued on the security of a particular fund, is in reality the promise of the county, and so the county is bound to advance out of general county funds, money sufficient to pay interest.

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may be enforced in the same manner as is by law provided in the case of other County Debentures. (*s*)

Surplus of the Non-resident Land Fund to be divided among municipalities.

167. The Council of the County may, from time to time, pass by-laws apportioning the surplus moneys in the Non-Resident Land Fund amongst the Municipalities ratably, according to the moneys received and arrears due on account of the non-resident lands in each Municipality; (*t*) but such apportionment shall always be so limited that the Debentures unpaid shall never exceed two-thirds of the whole amount to the credit of the fund. (*u*)

Treasurer's per centage or salary how paid.

168. The Treasurer shall not be entitled to receive from the person paying taxes, any percentage thereon, but may receive from the fund such percentage upon all moneys in his hands, or such fixed salary in lieu thereof, as the County Council by by-law may direct. (*v*)

Annual statement of the said fund, to be submitted to the County Council.

169. The County Treasurer shall prepare and submit to the County Council, at its first session in January in every year, (*w*) a report, certified by the Auditors, of the state of the Non-Resident Land Fund. (*x*)

What it shall show.

170. The said Report shall contain an account of all the moneys received and expended during the year ending on the thirty-first of December next preceding, distinguishing the sums received on account of, and paid to, the several Municipalities, and received and paid on account of Interest or Debentures negociated or redeemed, and the sums invested and the balance in hand; a list of all Debentures then unpaid, with the dates at which they will become due; and a statement of all the arrears then due (distinguishing those due in every

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(*s*) In any suit upon a debenture, it is not necessary for the plaintiff to set forth in the declaration or other pleading or prove the mode by which he became the holder of the debenture. (Municipal Act, sec. 216.) It is sufficient for him in his declaration to describe himself as the holder of the debenture (alleging the indorsation in blank, if any) and shortly stating its legal effect and purport, and to make proof accordingly. (*Ib.*) He may recover the full amount of the debenture notwithstanding its negotiation by the corporation at an amount less than par. (*Ib.* sec. 217.)

(*t*) See note *n* to sec. 157.

(*u*) See sec. 164.

(*v*) See note *n* to sec. 148.

(*w*) See note *f* to sec. 50 and note *u* to sec. 60.

(*x*) See note *n* to sec. 157.

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Municipality) and the amount due on lands then advertised for sale, or which by-law may be advertised during the ensuing year. (*y*)

Copy to be transmitted to Provincial Secretary.

171. The Warden shall cause a copy of the report to be transmitted to the Provincial Secretary for the information of the Governor General. (*b*)

Collection of taxes on lands of non-residents in cities provided for.

172. Arrears of taxes due to Cities or Towns withdrawn from the jurisdiction of the Counties in which they are situated, or forming a separate County, shall be collected and managed in the same way as like arrears due to other Municipalities; and the Chamberlain or Treasurer, and Mayor, shall, for these purposes, perform—in the case of Cities and Towns—the like duties as are hereinbefore, in the case of other Municipalities, imposed on the Treasurer and Warden. (*c*)

County Treasurers, &c., to keep triplicate blank Receipt books; use thereof.

173. The Treasurer of every County, (*d*) and the Treasurer or Chamberlain of every City and every Town withdrawn from the jurisdiction of the County in which it is situate, (*e*) shall be required to keep a triplicate Blank Receipt Book, and, on receipt of any sum of money for taxes on land, shall deliver to the party making payment one of such receipts, and shall deliver to the County, City or Town Clerk the second of the set, with the corresponding number, retaining the third of the set in the book; delivery of such receipts to be made to the Clerk at least every three months; (*f*) the County, City or

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(*y*) The report must contain:

1. An account of all the moneys received and expended during the year, *distinguishing* the sums received on account of and paid to the several municipalities, and received and paid on account of interest or debentures negotiated or redeemed, *and* the sums invested *and* the balance on hand.
2. A list of all debentures unpaid, with the dates at which they will become due.
3. A statement of all the arrears then due (distinguishing those due in every municipality) and the amount due on lands advertised for sale, or which may be advertised during the ensuing year.

(*b*) It is not said when the Warden shall cause this to be done, but it is intended that he shall do so within a reasonable time after the receipt of the report.

(*c*) Every city or town separated from the jurisdiction of the county in which situate, is a county of itself for municipal purposes. (Municipal Act, sec. 356.)

(*d*) See note *n* to sec. 157.

(*e*) See note *c* to sec. 172.

(*f*) This is intended not merely as a check upon the person receiving the money, but for the preservation of evidence of payment; so

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Town Clerk shall file such receipts, and, in a book to be kept for that purpose, shall enter the name of the party making payment, the lot on which payment is made, the amount paid, the date of payment, and the number of the receipt; (*g*) the Auditors shall examine and audit such books and accounts at least once in every three months. (*h*)

Audit of Books, &c.

RESPONSIBILITY OF OFFICERS.

Treasurers and Collectors to give security, and how.

174. Every Treasurer, Chamberlain and Collector, before entering upon the duties of his office, shall enter into a bond to the Corporation of the Municipality for the faithful performance of his duties. (*i*)

Bond with sureties.

175. Such bond shall be given by the officer and two or more sufficient sureties, in such sum and such manner as the Council of the Municipality by any By-law shall require in

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that if one set of receipts should happen to be destroyed or mislaid, the other will be forthcoming.

(*g*) The entries required are:

1. The name of the party making payment;
2. The lot on which the payment is made;
3. The amount paid;
4. The date of the payment;
5. The number of the receipt.

(*h*) See note *i* to sec. 50, and note *u* to sec. 60.

(*i*) Each of the officers named is by virtue of his office connected with the receipt or disbursement of moneys belonging to the Corporation. It is made the duty of each, "before entering upon the duties of his office," to enter into a bond to the Corporation of the municipality for the faithful performance of his duties. Besides, each must, before entering on the duties of his office, make and subscribe a declaration of office. (See sec. 179 of the Municipal Act). The appointment to the office necessarily precedes the obligation to give the bond or make the oath. So soon as the person is appointed, it becomes his duty to do the one and the other. But the omission of either does not *per se* vacate the appointment, unless conditionally made, nor render the person appointed incompetent to discharge the other duties appertaining to his office. (See *Judd* v. *Reed*, 6 U. C. C. P. 362.) So that if a Collector, having given the required bond without taking the oath of office, collect moneys, it will be no defence to his sureties that he failed to take the oath of office (*Municipality of Whitby* v. *Flint*, 9 U. C. C. P. 449); nor would it be any defence to his sureties that his roll was not properly certified (*The Corporation of the Township of Whitby* v. *Harrison*, 18 U. C. Q. B. 608); or not delivered to him within the time limited by law in that behalf (*Todd* v. *Perry et al.*, 20 U. C. Q. B. 649); nor that after the roll was delivered to him, the time for making collections was, without the knowledge of the sureties, extended. (*Ib.* and see *Corporation of Whitby* v. *Harrison*, 18 U. C. Q. B. 606.)

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that behalf, and shall conform to all the provisions of such By-law. (*j*)

Penalty on Assessors or Clerks failing to perform their duty, and how enforced.

176. If any Assessor or Clerk refuses or neglects to perform any duty required of him by this Act, he shall, upon conviction thereof before the Recorder's Court of the City, or before the Court of General Quarter Sessions of the County in which he is Assessor or Clerk, forfeit to Her Majesty such sum as the Court shall order and adjudge, not exceeding one hundred dollars. (*k*)

(*j*) The bond should be made to the Corporation of the municipality (sec. 174), and in the name of the Corporation, thus: "*The Corporation of the* (county, city, town, village, township, or united counties, or united townships, *as the case may be*) *of* (naming the same). (Sec. 4 of the Municipal Act.) But it does not follow that bonds taken in any other name or in any other form will be void. A bond by a Collector and sureties to "the Treasurer of the town of," &c., has been held good. (*Judd* v. *Read*, 6 U. C. Q. P. 362; *Todd* v. *Perry et al.*, 30 U.C. Q.B. 649.) So where it was to "The Municipality of the Township of Whitby" (*The Corporation of the Township of Whitby* v. *Harrison*, 18 U. C. Q. B. 603, 606), or "The Provisional Municipal County Council of the County of Bruce" (*The Provisional Corporation of the County of Bruce* v. *Cromar*, 22 U. C. Q. B. 321), in each case the bond was held good. (See also *The Brock District Council* v. *Bowen*, 7 U. C. Q. B. 471; *The Trent and Frankford Road Company* v. *Scott Marshall*, 10 U. C. C. P. 329.) The bond, when given, should have two or more *sufficient* sureties, in such sum and in such manner as the Council of the municipality by any by-law shall require in that behalf. The members of Municipal Councils cannot, as trustees for the rate-payers, evince too much care in seeing that the receipt and expenditure of the money of the rate-payers is properly secured; and in cases of flagrant neglect, it is quite possible that the members themselves might be held personally responsible. (See *Parks* v. *Davis*, 10 U. C. C. P. 229.) The bond, if in general terms for accounting and paying over all moneys collected, will apply as well to moneys collected for county purposes as for any of the purposes mentioned in sec. 191 of this act. (See sec. 193.)

(*k*) This is a wise provision, intended to secure the due execution of the act by the officers mentioned, whose business it is to learn their duty, and to do it accordingly. Either refusal or neglect is made punishable. The former involves an act of the will, but the latter does not necessarily do so. Any inquiry into the motives or causes of neglect, so far as this section is concerned, would be inexpedient: it would be leaving too much to the lenity of a jury. But mere omission is not necessarily equivalent to neglect. Inability or superior force may excuse the non-performance of a duty by one who is willing to do it. Nor does it follow that every non-compliance with the directions of the act, in its minor details, will bring the party within the penalty of this section. Neglect, however, may in general be described as the omission to do some duty which the party was able to do, but did not do. Forgetfulness is no excuse. The penal part of the act may press with more severity in one class of cases than another, but with that the Courts have nothing

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Other Assessors may act for those in default.

177. If an Assessor neglects or omits to perform his duties, (*l*) the other Assessor or other Assessors (if there be more than one for the same locality), or one of such Assessors, shall, until a new appointment, perform the duties, (*m*) and shall certify upon his or their Assessment Roll the name of the delinquent Assessor, and also, if he or they know it, the cause of the delinquency; (*n*) and any Council may, after an Assessor neglects or omits to perform his duties, appoint some other person to discharge such duties; (*o*) and the Assessor so appointed shall have all the powers and be entitled to all the emoluments which appertain to the office. (*p*)

Punishment of Clerks, Assessors, &c., making fraudulent assessments, &c.

178. If any Clerk, Assessor or Collector, acting under this Act, makes any unjust or fraudulent assessment or collection, or copy of any Assessor's or Collector's Roll, or wilfully and fraudulently inserts therein the name of any person who should not be entered, or fraudulently omits the name of any person who should be entered, or wilfully omits any duty required of him by this Act, (*q*) he shall be guilty of a misdemeanor, and

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to do: the law is so written, and the Courts have nothing to do with the consequences. (See *King* v. *Burrell*, 12 A. & E. 460.) The neglect may be wholly to do the duty, or to do it within the time limited in that behalf. Either is neglect, within the meaning of this section. It is of the utmost importance, so far as the administration of the provisions of the Municipal and Assessment Acts is concerned, that things should be done when directed to be done. (See *Hunt* v. *Hibbs*, 5 H. & N. 123.) This section throughout, so far as neglect is concerned, applies rather to cases of mere neglect than of wilful neglect. The latter are looked upon as still more penal, and especially provided for by subsequent sections. (Sec. 178.)

(*l*) See note *k* to sec. 176.

(*m*) See section 21 and following sections of this act.

(*n*) The duty of the "*other* assessor or assessors," under the circumstances stated, to do what is required of them, is as much a duty as any duty primarily imposed upon him or them under this act.

(*o*) Not only is the "other assessor or assessors" to perform the duties of the delinquent assessor, but to certify upon the roll,

1. The name of the delinquent;
2. The cause of the delinquency, if known.

(*p*) The power to appoint involves the power to remove, and neglect or omission to perform specified duties is a just cause of removal.

(*q*) Cases of refusal or mere neglect are provided for by sec. 176. This section is intended for the punishment of misconduct still more reprehensible than any provided against in that section. The acts of misconduct specified are:

1. Making any unjust or fraudulent assessment or collection, or copy of any assessor's or collector's roll. (See sec. 179.)

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upon conviction thereof, before a Court of competent jurisdiction, shall be liable to a fine not exceeding two hundred dollars, and to imprisonment until the fine be paid, or to imprisonment in the Common Gaol of the County or City, for a period not exceeding six months, or to both such fine and imprisonment, in the discretion of the Court. (*r*)

What shall be evidence of fraudulent assessment.

179. Proof to the satisfaction of the jury, that any real property was assessed by the Assessor at an actual value greater or less than its true actual value, by thirty per centum thereof, shall be *prima facie* evidence that the assessment was unjust or fraudulent. (*s*)

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2. Wilfully *and* fraudulently inserting therein the name of any person who should not be entered, *or* fraudulently omitting the name of any person who should be entered.
3. Wilfully omitting *any* duty required by this act. (See note *k* to sec. 176.)

The wilful and contumacious refusal of an officer to perform his duty, works a forfeiture of his office. (*Wildes* v. *Russell*, 1 L.R. C.P. 722.)

(*r*) The punishment may be,

1. Fine not exceeding $200 *and* to imprisonment till the fine be paid.
2. Imprisonment in the common gaol for a period not exceeding six months.
3. *Both* such fine and imprisonment, in the discretion of the court.

(See *In re Slater* v. *Wells*, 9 U. C. L. J. 21.)

The punishment in cases falling under sec. 176, is fine "not exceeding $100."

(*s*) The true actual value of real property is in general mere matter of opinion; and where the subject of inquiry is a mere matter of opinion, opinions of men will be found widely to differ. One man is sanguine, and fixes present value in hope of future increase; another is gloomy, and is influenced by fears of future decrease. One values for purposes of sale, being able and willing to buy; another values with the like view, being neither able nor willing to buy. Each man has his own stand-point, and his opinion is greatly influenced thereby. (See note *a* to sec. 30.) That the price paid for land, and the money expended upon it, do not constitute its value, is a matter of every day's experience. The value rather depends upon the number of persons who at the moment are willing to purchase, coupled with the unwillingness of the owners to sell, and, in a less degree, by the amount of capital held for investment in land at the time. The anxiety of the owner to sell, when few are willing to buy, frequently reduces it to a value more nominal than real. Strictly speaking, the value of land, like any other commodity, is the price it will bring in the market at the time it is offered for sale. (See *Squire qui tam* v. *Wilson*, 15 U. C. C. P. 284.) But before any man can be convicted under this section, the jury must be satisfied of the actual value of the property in question; and when it has been arrived at, a valuation greater or less than it, by thirty per cent., is made *prima facie* evidence that the assess-

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Assessors liable to the greatest punishment.

180. An Assessor convicted of having made any unjust or fraudulent assessment, (*t*) shall be sentenced to the greatest punishment, both of fine and imprisonment, allowed by this Act. (*u*)

Penalty for not making and completing Assessment Rolls by the proper time.

181. With reference to the Upper Canada Jurors' Act, if an Assessor of any Township, Village or Ward neglects or omits to make out and complete his Assessment Roll for the Township, Village or Ward, and to return the same to the Clerk of such Township or Village, or of the City or Town in which such Ward is situated, or to the proper officer or place of deposit of such Roll, on or before the first day of September of the year for which he is Assessor, (*a*) every such Assessor so offending shall forfeit for every such offence the sum of two hundred dollars, one moiety thereof to the use of the Municipality, and the other moiety, with costs, to such person as may sue for the same in any Court of competent jurisdiction, by action of debt or information; (*b*) but nothing herein contained shall be construed to relieve any Assessor from the obligation of returning his Assessment Roll at the period required elsewhere by this Act; and from the penalties incurred by him by not returning the same accordingly. (*c*)

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ment was unjust or fraudulent. But it is still in the power of the accused, by proof of the circumstances under which the assessment was made, to rebut the *prima facie* case so established.

(*t*) See note *s* to sec. 179.

(*u*) See note *r* to sec. 178.

(*a*) See note *k* to sec. 176.

(*b*) The County Court has now jurisdiction in penal actions. (*Brash q. t.* v. *Taggart*, 16 U. C. C. P. 415.) The statute 18 Eliz. cap. 5, prohibits the compromise of such actions without the leave of the court (*Bleeker* v. *Meyers*, 6 U. C. Q. B. 134.), and in one case leave was given on paying the Crown's share into court. (*Gray qui tam* v. *Deitrick*, H. T. 6 Wm. IV.; R. & R. Dig., Penal Action, 2.) Where it clearly appears on the face of the declaration, that the consideration of the defendant's promise was a compromise of such an action without leave of the court, brought by the plaintiff as a common informer against defendant, the consideration will be held to be illegal, and the declaration bad. (*Hart* v. *Meyers*, 7 U. C. Q. B. 416.) The verdict of a jury for defendant, in a penal action, on a question of fact properly left to them, is final and conclusive. (See *Hall* v. *Green*, 9 Ex. 247; *Gough* v. *Hardman*, 6 Jur. N. S. 402; *McLellan q. t.* v. *Brown*, 12 U. C. C. P. 542; *Squire qui tam* v. *Wilson*, 15 U. C. C. P. 284.) No damages are recoverable for the detention of the debt, because the debt is not due till judgment. (See *Frederick* v. *Lookup*, 4 Burr. 2018; *Cuming* v. *Sibly*, 4 Burr. 2489.)

(*i*) See note *i* to sec. 50, and note *u* to sec. 80.

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Proceedings for compelling Collectors to pay over moneys collected to the proper Treasurer.

182. If a Collector refuses or neglects (*d*) to pay to the proper Treasurer or Chamberlain, or other person legally authorized to receive the same, the sums contained in his roll, or duly to account for the same as uncollected, (*e*) the Treasurer or Chamberlain shall, within twenty days after the time when the payment ought to have been made, (*f*) issue a warrant under his hand and seal, directed to the sheriff of the County, or to the High Bailiff of the City (as the case may be) commanding him to levy of the goods, chattels, lands and tenements of the Collector and his sureties, such sum as remains unpaid and unaccounted for, with costs, and to pay to the Treasurer or Chamberlain the sum so unaccounted for and to return the warrant within forty days after the date thereof. (*g*)

Warrant.

Warrant to be delivered to Sheriff, &c.

183. The said Treasurer or Chamberlain shall immediately deliver the said warrant to the Sheriff of the County, or High Bailiff of the City, as the case may require. (*h*)

(*d*) *Neglects or refuses*, see note *k* to sec. 176.

(*e*) It is the duty of every collector of taxes on or before 14th December in every year, or on such other day in the next year not later than 1st April, as the Council of the city, town, township or village may appoint, to return his roll to the Treasurer or Chamberlain of the municipality, and pay over the amount payable to such Treasurer or Chamberlain, specifying in a separate column in his roll, how much of the whole amount paid over is on account of such separate rate. (Sec. 104.) If any of the taxes mentioned in the collectors' roll remain unpaid, and the collector be not able to collect the same, he must deliver to the Chamberlain or Treasurer of the municipality, an account of all taxes remaining due on the roll, and in such account must show opposite to each assessment the reason why he could not collect the same, by inserting in each case the words "non-resident" or "not sufficient property to distrain" (as the case may be). (Sec. 106.)

(*f*) The day on which the payment ought to have been made must be reckoned exclusively. (See *Young* v. *Higgon*, 6 M. & W. 49; *Gibson* v. *Musket*, 3 Scott N. R. 429.)

(*g*) It is of the greatest importance that moneys due to a municipal corporation for taxes or rates, should with as little delay as possible be paid. This is necessary in order to enable the corporation not merely to pay its officers and keep faith with contractors, but to keep faith with public creditors. Hence it is that sureties are necessary (secs. 174, 175) and hence it is that so stringent provisions, even of a criminal nature, are enacted against collectors and others whose duty it is to collect and pay over taxes. (Sec. 182.) Hence it is that the very summary remedy of a civil nature is here provided, and that remedy is an immediate one, not only against the goods, chattels, lands and tenements of the collector, *but of his sureties*.

(*h*) See note *g* to sec. 182.

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Sheriff, &c., to execute it; and pay it over.

184. The Sheriff or High Bailiff to whom the warrant is directed shall, within forty days, cause the same to be executed and make return thereof to the Treasurer or Chamberlain, and shall pay to him the money levied by virtue thereof, (*i*) deducting for his fees the same compensation as upon writs of execution issued out of the Courts of record. (*j*)

Mode of compelling Sheriff, &c., to pay over.

185. If a Sheriff or High Bailiff refuses or neglects to levy any money when so commanded, or to pay over the same, or makes a false return to the warrant, or neglects or refuses to make any return, or makes an insufficient return, (*k*) the Treasurer or Chamberlain may, upon affidavit of the facts, apply in a summary manner, to either of the Superior Courts of Common Law in term time, or to any Judge of either Court in vacation, for a rule or summons calling on the Sheriff or High Bailiff to answer the matter of the affidavit. (*l*)

Rule of Court.

When returnable.

186. The said rule or summons shall be returnable at such time as the Court or Judge directs. (*m*)

Hearing on return.

187. Upon the return of such rule or summons the Court or a Judge may proceed in a summary manner upon affidavit, and without formal pleading, to hear and determine the matters of the application. (*n*)

(*i*) The duties of the officers to whom the writ is delivered, are:
1. To cause the same to be executed.
2. To make return thereof to the Treasurer or Chamberlain.
3. To pay over the money levied—deducting his fees.
All within forty days.

(*j*) A sheriff is not entitled to poundage on a writ of execution, unless he actually levy, that is, make the money. (*Buchanan et al.* v. *Frank*, 15 U. C. C. P. 196.) If the claim be settled by means of the pressure of the writ, the sheriff is entitled to reasonable compensation therefor. (*Ib.*)

(*k*) The section applies if the sheriff or high bailiff:
1. Refuses or neglects to levy.
2. To pay over the amount, if levied.
3. Makes a false return.
4. Neglects or refuses to make any return, or makes an insufficient return.

(*l*) The application is to be made "upon affidavit of the facts." If the affidavit be deemed sufficient, the court or judge will grant a rule or summons, returnable at such time as may be directed, to answer the matter of the affidavit. (See sec. 186.)

(*m*) See note *l* to sec. 185.

(*n*) It is enacted that the court or a judge may proceed in a summary manner, to hear and determine the matters of the application. Apparently as much power is given to the judge as the court. The juris-

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188. If the Court or Judge be of opinion that the Sheriff or High Bailiff has been guilty of the dereliction alleged against him, (*o*) such Court or Judge shall order the proper officer of the Court to issue a writ of *Fieri Facias*, adapted to the case, directed to a Coroner of the County in which the Municipality is situate, or to a Coroner of the City (as the case may be) for which the Collector is in default. (*p*)

Fi. fa. to the Coroner to levy the money.

189. Such Writ shall direct the Coroner to levy of the goods and chattels of the Sheriff or High Bailiff, the sum which the Sheriff or High Bailiff was ordered to levy by the warrant of the Treasurer or Chamberlain, together with the costs of the application and of such writ and of its execution; (*q*) and the Writ shall bear date on the day of its issue, whether in term or vacation, and shall be returnable forthwith upon its being executed, (*r*) and the Coroner, upon executing the same, shall be entitled to the same fees as upon a Writ grounded upon a Judgment of the Court. (*s*)

Tenor of such Writ.

Execution of Writ.

Fees.

190. If a Sheriff or High Bailiff wilfully omits to perform any duty required of him by this Act, (*t*) and no other penalty is hereby imposed for the omission, he shall be liable to a penalty of two hundred dollars—to be recovered from him in any court of competent jurisdiction at the suit of the Treasurer of the County or Chamberlain of the City. (*u*)

Penalty on Sheriff, if no other imposed.

191. All money assessed, levied and collected for the purpose of being paid to the Receiver General, or to any other public officer, for the public uses of the Province, or for any special purpose or use mentioned in the Act under which the same is raised, shall be assessed, levied and collected by, and accounted for and paid over to, the same persons and in the same manner and at the same time, as taxes imposed on the

Payment of money collected from the Province.

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diction of each is to hear and determine; and it may be contended that when a judge determines, his decision is final. The jurisdiction is a statutable one, and in the absence of a provision for an appeal from the decision of the judge or the court, it may be argued there is no appeal. The point is as yet undecided.

(*o*) See note *k* to sec. 185.

(*p*) See note *g* to sec. 182.

(*q*) See secs. 182, 185.

(*r*) See note *g* to sec. 182.

(*s*) See note *j* to sec. 184.

(*t*) See note *k* to sec. 176, and note *q* to sec. 178.

(*u*) See note *b* to sec. 181.

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same property for County or City purposes, and shall in law and equity be deemed and taken to be moneys collected for the County or City so far as to charge every Collector, Chamberlain or Treasurer with the same, and to render him and his sureties responsible therefor, and for every default or neglect in regard to the same, in like manner as in the case of moneys assessed, levied and collected for the use of the City or County. (*v*)

How money collected for County purposes shall be paid over.

192. All moneys collected for County purposes, or for any of the purposes mentioned in the preceding section, shall be payable, by the Collector to the Township, Town or Village Treasurer, and by him to the County Treasurer, and the Corporation of the Township, Town or Village shall be responsible therefor to the Corporation of the County. (*a*)

Collectors or Treasurers bound to apply all moneys collected by them.

193. Any bond and security given by the Collector or Treasurer to the Corporation of the Township, Town or Village, that he will account for and pay over all moneys collected or received by him, shall apply to all moneys collected or received for County purposes, or for any of the purposes mentioned in the one hundred and ninety-first section. (*b*)

Local Treasurers to pay over County moneys to County Treasurers.

194. The Treasurer of every Township, Town or Village shall, within fourteen days after the time appointed for the final settlement of the Collectors' Rolls, (*c*) pay over to the Treasurer of the County all moneys which were assessed and

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(*v*) See secs. 174, 175, 176, 177, 178, 179, 182 *et seq.* and notes thereto.

(*a*) It is not only declared that all the moneys collected for county purposes, *or* for any of the purposes mentioned in the preceding section shall be payable by the Collector of the township, &c., to the County Treasurer, but that the corporation of the township shall be responsible therefor (apparently whether collected or not) to the corporation of the county. This of itself should induce local corporations to employ only active and reliable men as collectors, and to exact from all men holding such an office, ample security for the due accounting and paying over all moneys collected. The bond or security in such a case will apply to county moneys as well as all moneys mentioned in sec. 191, whether so expressed in the bond or not. (Sec. 193.)

(*b*) It is not every bond or security given by a Collector or Treasurer that will come under this section, but only such as are conditioned or provided for accounting and paying over all moneys collected or received by the officers. These general words when used, are, by the operation of this section, made to extend not only to moneys collected or received for county purposes, but for any of the purposes mentioned in sec. 191 of the act.

(*c*) See secs. 104, 106.

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by law required to be levied and collected in the Municipality for County purposes, or for any of the purposes mentioned in the one hundred and ninety-first section of this Act. (*d*)

Mode of enforcing such payment.

195. If default be made in such payment, (*e*) the County Treasurer may retain or stop a like amount out of any moneys which would otherwise be payable by him to the Municipality, or may recover the same by a suit or action for debt against such Municipality, or whenever the same has been in arrear for the space of three months, he may by warrant under his hand and seal reciting the facts, direct the Sheriff of the County to levy and collect the amount so due with interest and costs from the Municipality in default. (*f*)

Warrant to Sheriff.

How the Sheriff shall levy.

196. The Sheriff, upon receipt of the warrant, shall levy and collect the amount, with his own fees and costs, as if the warrant had been a writ of execution issued by a Court of law, (*g*) and he shall levy the amount of costs and fees, in the same manner as is provided by the "Act respecting the Municipal Institutions of Upper Canada," in cases of writs of execution. (*gg*)

County Treasurer, &c., to account for and pay over Crown moneys.

197. The County Treasurer, and City Chamberlain, respectively, shall be accountable and responsible to the Crown for all moneys collected for any of the purposes mentioned in the one hundred and ninety-first section of this Act, and shall pay over such moneys to the Receiver-General. (*h*)

(*d*) If default be made, summary proceedings may be had against the Treasurer, such as authorized by the act against the Collector. (Sec. 195.)

(*e*) See sec. 194.

(*f*) The remedies are three:

1. Retaining or stopping a like amount out of any moneys which would otherwise be payable to the municipality.
2. Recovering the same by a suit or action for debt against such municipality.
3. Issue of a warrant whenever in arrears for the space of three months.

(*g*) See note *g* to sec. 182.

(*gg*) See Municipal Act, sec. 224, and notes thereto.

(*h*) The liability of the Collector, as declared in sec. 191, is here extended to the County Treasurer or City Chamberlain, so as to make the collection of rates, or rather the paying over the money collected, as expeditious as possible.

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Municipality responsible for such moneys.

198. Every County, City and Town withdrawn from the jurisdiction of the County within which it is situated, (*i*) shall be responsible to Her Majesty, and to all other parties interested, that all moneys coming into the hands of the Treasurer or Chamberlain of the County, City or Town in virtue of his office, shall be by him duly paid over and accounted for according to law. (*j*)

Treasurer, &c., responsible to County, City, &c.

199. The Treasurer or Chamberlain and his sureties shall be responsible and accountable for such moneys in like manner to the County, City or Town, and any bond or security given by them for the duly accounting for and paying over moneys coming into his hands, belonging to the County, City or Town, shall be taken to apply to all such moneys as are mentioned in the one hundred and ninety-first section, (*k*) and may be enforced against the Treasurer or Chamberlain, or his sureties, in case of default on his part. (*l*)

Bonds to apply.

Bonds to apply to School moneys, &c.

200. The bond of the Treasurer or Chamberlain and his sureties shall apply to School moneys and all public moneys of the Province; and in case of any default, Her Majesty may enforce the responsibility of the County, City or Town, by stopping a like amount out of any public moneys, which would otherwise be payable to the County, City or Town, or to the Treasurer or Chamberlain thereof, or by suit or action against the Corporation. (*m*)

City, &c., responsible for default of Chamberlain, &c.

201. Any person aggrieved by the default of the Chamberlain or Treasurer, may recover from the Corporation of the City, County or Town the amount due or payable to such person, as money had and received to his use. (*n*)

(*i*) Every such city and town is a county of itself for municipal purposes. (Municipal Act, sec. 356.)

(*j*) See note *a* to sec. 192.

(*k*) See note *b* to sec. 193.

(*l*) In an action by the Corporation of a county against their Treasurer, on his bond, where it was proved that Government money fraudulently charged by him as paid over to the Government was not so paid, it was held unnecessary to show a demand of the Government upon him for the money, in order to entitle the Corporation to recover. (*Corporation of Essex* v. *Park*, 11 U. C. C. P. 473.)

(*m*) See note *f* to sec. 195.

(*n*) The count for money had and received is the most common of all the common counts. It is applicable wherever the defendant has received moneys which in justice and equity belong to the plaintiff, under circumstances which render a receipt of it a receipt to the use of the plaintiff. (See Bullen & Leake's Precedents, 2nd ed. p. 36, *et seq.*)

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MISCELLANEOUS.

Penalty for tearing down notices, &c.

202. If any person wilfully tears down, injures or defaces any advertisement, notice or other document, which is required by this Act to be posted up in a public place for the information of persons interested, he shall, on conviction thereof in a summary way before any Justice of the Peace having jurisdiction in the county, be liable to a fine of twenty dollars, and in default of payment or for want of sufficient distress to imprisonment not exceeding twenty days. (*o*)

Recovery of fines and forfeitures hereby imposed.

203. The fines and forfeitures authorized to be summarily imposed by this Act, shall, when not otherwise provided, be levied and collected by distress and sale of the offender's goods and chattels, under authority of a warrant of distress to be issued by a Justice of the Peace of the County, and in default of sufficient distress, the offender shall be committed to the Common Gaol of the County, and be there kept to hard labour for a period not exceeding one month. (*p*)

Application.

204. When not otherwise provided, all penalties recovered under this Act shall be paid to the Treasurer or Chamberlain, to the use of the Municipality. (*q*)

REPEALING CLAUSE.

Cap. 55, Con. Stat. U. C., and Acts amending it, repealed.

205. The Acts amending the Assessment Act, passed in the years one thousand eight hundred and sixty, one thousand eight hundred and sixty-one, and one thousand eight hundred and sixty-three, and the "Assessment Act," being chapter

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(*o*) It is only when the person charged is proved *wilfully* to have torn down, injured or defaced an advertisement, notice or other document, under the act, that he can be convicted. Where the act charged can be said to have been the result of mere neglect (see note *k* to sec. 176) and not of the will, there is no offence under this section. If convicted, there may be a fine imposed of twenty dollars; and in default of sufficient distress, imprisonment for twenty days.

(*p*) This section applies to all fines and forfeitures authorized to be summarily enforced by the act, when no other mode of levy is provided. Where a fine or pecuniary forfeiture is imposed, the object to be attained is the collection of the money. If that object can be attained by distress of goods and chattels, it would be unlawful to imprison. The imprisonment is only authorized in default of sufficient distress, and then for a period not exceeding one month at hard labour.

(*q*) This section also applies to all penalties (not to all fines and forfeitures) recovered under the act. All such, when not otherwise provided, must be paid to the Treasurer or Chamberlain, to the use of the municipality. The fine authorized by sec. 176, to be imposed on an Assessor or Clerk who refuses or neglects to perform any duty under the act, is to be forfeited "to Her Majesty."

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fifty-five of the Consolidated Statutes for Upper Canada, (*r*) are hereby repealed, saving any rights, proceedings or things legally had, acquired or done under the said Acts or any of them. (*s*)

Short title.

Commencement of Act.

206. This Act shall be known and may be cited as "The Assessment Act of Upper Canada," (*t*) and shall come into force and effect upon and from the first day of January, one thousand eight hundred and sixty-seven. (*u*)

(*r*) The statutes to which reference is here made, have been, in whole or in part, re-enacted by this act.

(*s*) See note *n* to sec. 428 of the Municipal Act.

(*t*) This has already been enacted in the act. (See sec. 1, and note *b* thereto.

(*u*) Questions may arise as to the effect of the act upon proceedings in actions commenced before and pending on the 1st January, 1867. The general scope of the act appears to be prospective, but in some parts is clearly retrospective.

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SCHEDULE A.

TOWNSHIP OF ——

Nos.	Names of Taxable Parties.					Value & Description of Real Property.					Personal Property.			Statute Labour.			Militia Roll.		
	Occupants.	Profession, Occupation, &c.	Householder or Freeholder.	Age.	Owners and Address.	Non-Residents.	School Section.	No. of Concession, Street, Square or other Designation.	No. of Lot, or House, &c.	No. of Acres, Feet, or other Measurement.	Value of each Lot.	Total Value of Real Property.	Taxable Income.	Total Value of Personal Property.	Total Value of Real and Personal Property	Quakers, Menonists, or Tunkers.	Persons from 21 to 60 years.	No. of Days.	Dogs.	Bitches.	First Class Service.	Second Class Service.	Reserve.

Take Notice, that you are Assessed as above specified, for the year 186—, under the Statutes. If you deem yourself overcharged, you or your Agent may notify the Clerk of the Municipality, in writing, of such overcharge, within fourteen days after this Notice has been left with you, and your complaint shall be tried, in conformity with the provisions of the Statutes, by the Court of Revision for the Municipality of

(ENDORSED.)

SIR: 18

Take Notice, that I intend to appeal against this Assessment, for the following reasons:

I am, Sir, your obedient servant,

To the Clerk of the Municipality of .

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SCHEDULE B.

To all to whom these presents shall come :

We, ——, of ——, Esquire, Warden, and ——, of ——, Esquire, Treasurer, of the County of ——, SEND GREETING :

Know ye, that by virtue of a Warrant, under the hand of the said Warden, and the seal of the said County, I, the said Treasurer, did, on the —— day of ——, in the year of our Lord, one thousand eight hundred and ——, sell by Public Auction, to ——, of ——, in the County of ——, that certain parcel or tract of land and premises hereinafter mentioned and described, and intended to be hereby conveyed, at and for the price or sum of —— of lawful money of Canada, to pay the arrears of taxes alleged to be due thereon up to the —— day of ——, in the year of our Lord, one thousand eight hundred and ——, together with costs.

Now know ye that we, said Warden and Treasurer, in pursuance of such sale, and for the consideration aforesaid, and in pursuance of the Statute in that behalf, do hereby grant, bargain and sell unto the said ——, his heirs and assigns, all that certain parcel or tract of land and premises, being composed of —— acres of —— lot number ——, in the —— concession of the Township of ——, in the said County, which said —— acres may be known and described as follows :

In witness whereof, we, the said Warden and Treasurer, have hereunto set our hands and affixed the seal of the said County, this —— day of ——, in the year of our Lord, one thousand eight hundred and ——; and the Clerk of the said Municipality hath countersigned the same.

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RULES OF COURT

FOR THE TRIAL OF CONTESTED ELECTIONS AND TARIFF OF FEES.

IN THE

COURTS OF QUEEN'S BENCH AND COMMON PLEAS.

MICHAELMAS TERM, 14TH VICTORIA.

WHEREAS, by an Act passed by the Parliament of this Province, in the twelfth year of Her Majesty's reign (cap. 81), entitled, "An Act to provide by one general law for the erection of Municipal Corporations, and the establishment of Regulations of Police, in and for the several Counties, Cities, Towns, Townships and Villages in Upper Canada," power was given to Her Majesty's Court of Queen's Bench in Upper Canada, and the several Judges thereof, to try and decide all matters relating to contested Municipal Elections as therein provided; And whereas, by the Act of the last session of Parliament (chapter 64), entitled, "An Act for correcting certain errors and omissions in the Act of the Parliament of this Province, passed in the last session thereof, intituled, '*An Act to provide by one general law for the erection of Municipal Corporations and the establishment of Regulations of Police, in and for the several Counties, Cities, Towns, Townships and Villages in Upper Canada,* for amending certain of the provisions of the said Act, and making some further provisions for the better accomplishment of the object thereof," the powers conferred on the said Court and Judges have been extended to the Court of Common Pleas and the Judges thereof, and additional powers have been thereby given in the premises to the said Courts and Judges respectively; and it being among other things in effect enacted, that it should and might be lawful for the Judges of Her Majesty's two Superior Courts of Common Law, at Toronto, or the majority of them, by any rule or rules to be by them for that purpose made, from time to time in term time, as occasion may require, to settle the forms of all such writs, whether of summons, certiorari, mandamus, execution, or of or for whatever other kind or purpose, as are authorized by the said Act; therefore, in order to settle the said forms, and to regulate the practice and proceedings in the said Courts in the matter aforesaid,

12 Vic. 81, sec. 146, *et seq.*

16 Vic. c. 181, sec. 27.

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It is ordered, that the following Rules be substituted for the Rules made in Hilary Term last, by the Judges of the said Court of Queen's Bench, for the trial of such elections; and that the forms of such writs, and the practice to be observed with respect to the matters aforesaid, shall be as follows, that is to say:

1. The relator entitled to complain of any election shall in person or by attorney, by written motion, apply to one of the said Courts of Queen's Bench or Common Pleas in term time, or to the Judge presiding in Chambers in vacation, for a writ of summons in the nature of a *quo warranto*, which motion must, according to the statute, be made within six weeks after the election complained against, or within one month after the person whose election is questioned shall have accepted the office, and not afterwards.

2. Such motion shall be founded, first, on a written statement, which shall be annexed to the motion paper, setting forth the interest which the relator has in the election, as candidate or voter, and setting forth also specifically, under distinct heads separately numbered (if there be more than one), all such grounds of objection as he intends to urge against the validity of the election complained against, and in favor of the validity of the election of the relator or another or other person or persons, when he shall claim that he or they or any of them have been duly elected; and at the foot of such statement there shall be an affidavit, made and signed by the relator, that he believes such grounds to be well founded: and, secondly, on an affidavit or affidavits of the relator, or other person or persons, setting forth fully and in detail the facts and circumstances which shall support the application.

The statement of the relator may be after the following form, *mutatis mutandis*:

STATEMENT OF THE RELATOR.

IN THE QUEEN'S BENCH (*or* COMMON PLEAS).

The statement and relation of ——, of ——, who, complaining that ——, of —— (*here inserting the names and additions of all, if more than one person*), hath (*or have*) not been duly elected, and hath (*or have*) unjustly usurped and still doth (*or do*) usurp the office of ——, in the Town of —— (*or Township of* ——, *as the case may be*), in the County (*or United Counties*) of ——, under the pretence of an election held on ——, at ——, in the said County (*or United Counties*). [And (*when it is claimed that the relator, or the relator and another, or others, ought to have been returned*) that (*here name the party or parties so entitled*) was (*or were*) duly elected thereto, and ought to have been returned at such election], and declaring that he the said relator hath an interest in the said election as a ——, states and shows the following causes why the election of the said —— to the said office should be declared invalid and void. [And (*when so claimed*) the said —— (*naming the party or parties*) be duly elected thereto.]

First—That (*for example*) the said election was not conducted according to law, in this, that, &c.

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Second—That the said —— was not duly or legally elected or returned, in this, that, &c.

Third—That, &c.

Signed by the relator in person, or by C. D. his attorney.

NOTE.—Where the intention of the relator is to impeach the election as altogether void, in which event, as the office cannot be claimed for any other or others, the portion of the above and succeeding forms relating thereto should be omitted.

3. If the Court or Judge applied to shall find sufficient ground for issuing a writ of summons in the nature of a *quo warranto*, then, upon such recognizance being entered into as the Act directs, and a proper affidavit of justification made, and the sufficiency of the sureties allowed by such Court or Judge, a writ shall issue, sealed and tested as other writs of summons in cases between party and party, and attached thereto shall be a copy of the relator's statement of objections and grounds, and of the names and additions of the persons who shall have made the affidavits upon which the writ was moved.

The recognizance and fiat for summons, and the writ of summons in these Rules mentioned, may be in the following forms:

FORM OF RECOGNIZANCE.

IN THE QUEEN'S BENCH (*or* COMMON PLEAS).

UPPER CANADA, County (*or United Counties of* ——). Be it remembered, that on the —— day of ——, in the year of our Lord one thousand eight hundred and ——, before me, ——, of ——, Chief Justice (*or a Justice, or a Commissioner for taking bail*) in Her Majesty's Court of Queen's Bench (*or Common Pleas*) for Upper Canada, cometh ——, of ——, of ——, and ——, of ——, and acknowledge themselves severally and respectively to owe to ——, of —— (*here inserting the name or names of the person whose election is complained against*), as follows, that is to say, the said ——, the sum of fifty pounds, and the said —— and —— the sum of twenty-five pounds each, upon condition that if the said —— do prosecute with effect the writ of summons in the nature of *quo warranto* to be issued on an order or fiat to be made at the instance and upon the relation of the said ——, against the said ——, to show by what authority he (*or they*) the said —— claims (*or claim*) to be (*here state the office so claimed*) and why he (*or they*) the said —— should not be removed therefrom, [and (*where so claimed by the relator*) why he the said relator (*or the party or parties entitled*) should not be declared duly elected, and be admitted to the said office]; and if the said —— do pay to the said —— all such costs as the said Court of —— (*or the Judge presiding in Chambers, at the City of Toronto, in the County of York*), shall direct in that behalf, then this recognizance to be void, otherwise to remain in full force.

Taken and acknowledged the day and year first above mentioned,
Before me, ——

FORM OF A JUDGE'S FIAT ORDERING A WRIT TO ISSUE IN VACATION IN THE QUEEN'S BENCH (OR COMMON PLEAS).

Upon reading the statement of ——, of ——, in the County of ——, complaining of the undue election and usurpation of the office of ——, by ——, [and (*if so, stating*) that the said —— (*relator or other person named*) was (*or were*) duly elected, and ought to have been returned to the said office], and upon reading the affidavits filed in support of the said statement; and also upon reading the recognizance of the said ——, and sureties therein named, and the same being allowed

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as sufficient; I do order that a writ of summons do issue, calling upon the said —— (*the party whose election is complained of*) to show by what authority he (*or they*) the said —— (*the party whose election is complained of*) now exercises or enjoys (*or exercise and enjoy*) the said office [and why (*if so claimed*) he (*or they*) the said ——, should not be removed therefrom, and the said —— (*relator or other person or persons named*) should not be declared duly elected, and be admitted thereto].

Dated this —— day of ——, 18—.

NOTE.—If by Rule of Court, the above form should be modified accordingly.

FORM OF WRIT OF SUMMONS.

UPPER CANADA.

VICTORIA, by the Grace of God, &c.

To ——, of ——, &c., in the County (*or United Counties*) of ——.

We command you (*and each of you*) that you (*and each of you*) be and appear before the Chief Justice or other Justice of our Court of Queen's Bench (*or Common Pleas*) for Upper Canada, presiding in Chambers, at the Judges' Chambers in our City of Toronto, on the eighth day after the day on which you shall be served with this writ, then and there to answer and show to such Chief Justice or Justice by what authority you claim to use, exercise or enjoy the office of ——, which office, upon the relation of ——, having, as he says, an interest in the election to the said office as a ——, we are informed that you have usurped and do still usurp [and that (*if so claimed*) the said —— (*relator or party or parties mentioned*) was (*or were*) and should have been declared duly elected and admitted thereto], and further to do and receive all those things which our said Chief Justice or Justice, shall thereupon order concerning the premises.

Witness, the Honorable ——, Chief Justice of our said Court of —— (*or other Justice in whose name the writ is tested*), at Toronto, this —— day of ——, 18—, and in the —— year of our reign.

FORM OF NOTICE TO BE ENDORSED ON OR ANNEXED TO THE WRIT OF SUMMONS.

IN THE QUEEN'S BENCH (*or* COMMON PLEAS).

The Queen, upon the relation of ——, against ——.

To —— and ——, named in the within (*or annexed*) writ of summons:

The within (*or annexed*) writ of summons has been issued at my instance and relation; and a statement concerning the premises, whereof a copy is hereunto annexed, is filed in the office of the Clerk of the Crown in this Court (*or with the Clerk in Chambers, at the City of Toronto*), together with affidavits supporting the same; and the names and additions of the deponents to the said affidavits are hereunder written. And you are served with the said writ of summons to the intent that you do appear and answer, as therein commanded, or otherwise judgment will be given against you by your default, and your election to the therein mentioned office will be declared invalid, and you will be removed therefrom [and the said —— (*the relator, or ——, the party or parties, if any, alleged to be entitled* therein named be declared duly elected, and will be admitted thereto in your place].

A. B. in person,
or by
C. D., his Attorney.

The above mentioned deponents are:

——, of ——.
——, of ——.

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MINUTE OF THE DAY OF SERVICE TO BE WRITTEN ON THE THE SUMMONS.

Served this —— day of ——, 18—.

4. A copy of such summons, and of the paper attached thereto, with a notice on the back of the copy of summons, according to the foregoing form, may be served by any literate person, who shall, within twenty-four hours after such service, make a minute on the writ of the time of serving the same ; and upon the return of the writ, the party or parties summoned may appear either in person or by attorney; and the manner of appearance shall be by indorsing on the back of the relator's statement attached to the motion paper, "The within named C. D., &c., appears in person (or by attorney, as the case may be) to answer the grounds of objection to his election, which are stated within."

5. If upon the return day of the summons the party or parties, having been duly served, shall not appear, then, on proof of such service by affidavit, according to the form subjoined, the Judge sitting in Chambers may, before rising on that day, direct an entry to be made as to such party or parties as make default, on the back of the relator's statement, thus: "The within named C. D. (and E. F.), being duly summoned, hath (or have) not appeared to answer to the matters within objected" Which entry shall be dated on the day of the return, and may be made on any subsequent day, if omitted to be made on that day.

FORM OF AFFIDAVIT OF SERVICE.

When made personally, if service special under the 148*th clause of the Statute* 12 *Vic cap.* 81, *the affidavit to be modified accordingly.*

(See sec. 131, sub-sec. 7, of the Municipal Act.)

IN THE QUEEN'S BENCH (*or* COMMON PLEAS).

The Queen, on the relation of ——, against ——.

——, of ——, in the ——, maketh oath and saith, that he did, on the —— day of ——, personally serve the above named defendant (*or defendants*) with the annexed writ of summons, by delivering to him (*or each of them*) a true copy thereof, on which said copy was endorsed a written notice, a copy whereof is hereto annexed, and to which said copy (*or copies respectively*) of the said writ was annexed a written copy of a statement of the above named relator, a copy of which said copy of statement is also hereunto annexed; and the deponent further saith, that the minute (*or minutes*) of the said service, written on the said writ of summons, was (*or were*) so written by this deponent within twenty-four hours after such service.

Sworn at ——, in the County of ——, this —— day of ——, 18—.

Before me ——.

6. When it shall appear to the Court or Judge that the Returning Officer should be made a party, a writ of summons shall issue to him, in the following form, upon a rule of court to issue for that purpose, or

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upon the fiat of the Judge, which summons shall be served with the like papers annexed, and the service thereof proved in like manner as is provided for other writs of summons, as aforesaid: and the party served shall appear and enter his appearance within the same time after service, and in the same manner; and in default thereof, he shall be liable to have judgment pass against him in his absence, as in the case of any other defendant making a like default, and be dealt with by attachment, execution or otherwise, as the circumstances of the case may require.

FORM OF WRIT OF SUMMONS TO A RETURNING OFFICER.

UPPER CANADA.

VICTORIA, by the Grace of God, &c.

Whereas, upon the relation of ——, in the Court of Queen's Bench (*or Common Pleas*), ——, it hath been ordered that a writ of summons should issue to ——, to show by what authority he (*or they*) claims or exercises (*or claim or exercise*) the office of ——. And whereas it appears to our Justices of our Court of Queen's Bench (*or Common Pleas*), before whom the said writ hath been made returnable (*or as the case may be*), that you were the Returning Officer by whom the said —— hath (*or have*) been returned as duly elected to the said office, and that it is proper you should be made a party to the proceeding aforesaid; These are therefore to summon you to be and appear before the Chief Justice or other Justice of our Court of Queen's Bench (*or Common Pleas*) for Upper Canada, presiding in Chambers, at the Judges' Chambers, in our City of Toronto, on ——, then and there to answer such matters and things as shall then and there be objected against you, and further to do and receive all those things which said Court or said Justice shall thereupon order concerning you in the premises.

Witness, &c.

7. In case of default of appearance by any party summoned as aforesaid, the Judge recording the same may, as to such as make default, proceed *ex parte;* and as to such as shall have appeared, as is herein provided, proceed to determine the validity of the election or elections complained of, and also (if so claimed) of the election of the person or persons alleged to have been duly elected, and give judgment thereon; or he may, in his discretion, with or without any application for that purpose, and having regard to the distance of the place where the party was served, or other circumstances, appoint a further day for the appearance of the party or parties summoned, of which an entry shall be made and signed by the Judge to the following effect, at the foot of the entry of non-appearance on the back of the relator's statement: "Whereupon a further day is given to the said ——, (or the said —— and ——,) to appear on," &c.

On which day, or as soon after as may be convenient, if no further postponement shall be in like manner granted, the case may be heard and disposed of in like manner as if the same had been determined and judgment given thereon, without granting a further day for appearance.

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8. At any time before the hearing, any party may have copies of the affidavits filed, on paying for the same.

9. At the hearing the relator shall not be allowed to object to the election of the party or parties complained against, or to support the election or elections of the person or persons alleged to have been duly elected, on any ground not specified in the statement on which the summons was moved; but it shall nevertheless be in the discretion of the Judge, if he shall think fit, to entertain upon his own view of the case any substantial ground of objection to or in support of the validity of the election of either or any of the parties which may appear in the evidence before him.

10. When the party or parties summoned has or have appeared, no more formal answer need be made by him or them to the relator's case, than by affidavits filed in answer; but the Judge before whom the case shall be pending may in his discretion require from either or any party further affidavits, or the production of any such evidence as the law allows.

11. In case of disclaimer under the statute 13 & 14 Vic. cap. 64, schedule A., No. 23, the provisions therein contained, and in sub-proviso No. 6, are to be observed. (See now sec. 131, sub-sec. 12, *et seq.* of the Municipal Act.)

12. In case a necessity shall appear for sending an issue to be tried by a jury, the writ for that purpose may be in the following form, and shall issue on the fiat of the Judge directing the same, and bear date on the day of its issuing:

WRIT OF TRIAL.

[L. S.] VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To the Judge of the County Court of the County of ——,

GREETING:

Whereas, upon the trial of the validity of an election of ——, chosen upon the —— day of ——, to be —— for the Township of —— (*or as the case may be*), in the County of ——, and which election hath been complained of by E. F., as the relator, alleging (*as the case may be*) that he himself, or that he and C. D., &c., or that C. D., &c., was or were duly elected, and ought to have been returned, it hath become material to ascertain whether (*here stating concisely the issues to be tried*); and whereas it is desired by ——, our Chief Justice (*or Justice*) of our Court of Queen's Bench (*or Common Pleas*), before whom the same is pending, that the truth of such matters as aforesaid may be found by a jury: We do, therefore, pursuant to the statute in such cases made and provided, command you, that by twelve good and lawful men of the County of ——, who are in no wise akin to the said E. F., the relator in the said case, or to the said (*the other party or parties, naming him or them*), and who shall be sworn truly to try the truth of the said matters, you do proceed to try the same accordingly; and when the jury shall have given their verdict on the matters aforesaid, we command you that

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you do forthwith make known to our said Chief Justice (*or Justice*) what shall have been done by virtue of this writ, with the finding of the jury hereon endorsed.

Witness, the Honorable ——, Chief Justice (*or Justice*) of our said Court, at Toronto, this —— day of ——, in the —— year of our reign.

FORM OF ENDORSEMENT OF VERDICT THEREON.

I hereby certify, that on the —— day of ——, before me, L. M., Judge of the County Court of the County (*or United Counties*) of ——, came as well the within named relator as the within named (*the other party or parties*) by their attorneys (*or as the case may be*), and the jurors of the jury, by me duly summoned as within commanded, also came, and being sworn to try the matters within mentioned on their oath, said that, &c.

13. When the Judge before whom any such case shall be pending, shall have determined the same, either *ex parte* in case of default, or on hearing the parties, or partly *ex parte* and partly on hearing the parties, he shall make up and annex to the statement of the relator, and to the affidavits and other papers filed in the case, a written judgment, attested by his signature, and dated on the day of the same being signed, in which it shall be sufficient to state concisely the ground and effect of the judgment, which judgment may be at any time amended by the same Judge, in regard to any matter of form. And the following may be the form of judgment when in favour of the relator:

IN THE QUEEN'S BENCH (*or* COMMON PLEAS).

The Queen, on the relation of ——, against ——.

Be it remembered, that on the —— day of ——, in the year of our Lord one thousand eight hundred and ——, at the Judges' Chambers in the City of Toronto, before me, ——, Chief Justice (*or Justice*) of Her Majesty's Court of Queen's Bench (*or Common Pleas*), came as well the above named relator by ——, his attorney, as the above named —— by his (*or their*) attorney, and service of the writ of summons hereunto annexed having been duly proved upon affidavit, and upon the said day and upon other days thereafter, at his Chambers aforesaid, having heard and read the statement and proofs of the said relator, touching and concerning the usurpation by him alleged against the said —— of the office of ——, in the said writ of summons mentioned [and (*if so*) the election of (*the party or parties named*) thereto], and the answers and proofs of the said ——; and having heard the said parties by their counsel (*or as the case may be*) and upon due consideration of all and singular the premises, now, that is to say, this —— day of ——, in the year aforesaid, I do adjudge and determine:

First—That the said relator had, at the time of his making his aforesaid complaint, an interest in the election to the said office of —— as a ——.

Second—That, &c.

Third—That, &c.

Fourth—That the said —— hath (*or have*) usurped, and doth (*or do*) still usurp the said office, and that he (*or they*) be removed therefrom [or that the election of —— to the said office was void, and that he (*or they*) be removed therefrom (*as the judgment may be*)]: And that the said relator (*or* the said [*naming the party or parties whose election is affirmed, when he or they are adjudged to be entitled to the said office*] was (*or were*) duly elected thereto, and ought to have been returned, and is (*or are*) entitled in law to be received into, and to use,

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exercise and enjoy the said office: And I do adjudge and determine that the said —— do not in any manner concern himself (*or themselves*) in or about the said office, but that he (*or they*) be absolutely forejudged and excluded from further using or exercising the same, under pretence of the said election [and further, that the said (*naming the relator or parties whose election is affirmed*) be (*or be respectively*) admitted to the said office in his (*or their*) place or places]; And I do further order, adjudge and determine, that the said relator do recover against the said —— his costs and charges by him in and about the said relation and the prosecution thereof expended, to be taxed in the said Court.

All which the said writ of summons, and the said judgment, and the statements, answers and proofs of the said relator and of the said ——, and all other things had before me touching the same, I do hereby certify and deliver into the said Court, according to the form of the statute in such case made and provided.

E. F., *J.*

And the following may be the conclusion of a judgment for the defendant, to follow the word *affidavit*, in the foregoing form:

Thereupon now at this day, that is to say, on the —— day of —— aforesaid, at the Judges' Chambers, at Toronto aforesaid, all and singular the relation and proofs of the said relator, and the answers and proofs of the said —— being seen and fully understood, I do consider and adjudge that the said office of —— so claimed by him (*or them*) the said —— be allowed and adjudged to him (*or them*) that the said —— be dismissed and discharged of and from the premises above charged upon him (*or them*) and also that he (*or they*) the said —— do recover against the said relator his (*or their*) costs by him, (*or them respectively*) laid out and expended in defending himself (*or themselves*) in this behalf. All which &c. (*as in the judgment for the relator*).

When the returning officer is made a party, the judgment to be modified accordingly.

14. When the judgment of the Judge in Chambers shall have been returned into court according to the statutes, and after the end of four days after such return, and if no rule shall have been granted to set aside or amend the judgment, the relator or person (or persons) in whose favour the judgment shall have been given, shall be at liberty to tax his or their costs, and the following entry shall be made under or upon the record of the judgment, after which execution may issue:—

"Afterwards, that is to say, on the —— day of ——, in the —— year of the reign of our Lady the Queen, cometh the said ——, and prayeth that his (*or their*) said costs, so as aforesaid adjudged to him (*or them*), be taxed and assessed according to the form of the statute in such case made and provided, and the said costs of the said ——, in and about his (*or their*) prosecution (*or defence*) aforesaid, and [(*when the Returning Officer is a party*) of the said ——, in and about his defence aforesaid], so as aforesaid adjudged to him (*or them*), are now here accordingly taxed and assessed as follows, that is to say, the costs of the said —— at the sum of —— [and the costs of the said —— (*when Returning Officer entitled thereto*), at the sum of ——], and the said ——, in mercy, &c."

15. The writs of certiorari and mandamus which it may become necessary to issue in any such case, will be in the common form of such writs, the command therein contained being suited to the circumstances of each case, and, when applicable, the following form may be used:

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FORM OF A WRIT OF MANDAMUS,

To remove the person (or persons, being less than the whole number of members of any Municipal Corporation) whose election is adjudged invalid, and to admit the person or persons adjudged lawfully elected.

Victoria, &c.

To the Municipal Corporation of —— (*the town, township, or city.*)

Whereas on the —— day of —— in the year of our Lord one thousand eight hundred and —— at the Judges' Chambers, in the City of Toronto, before —— Chief Justice (*or one of the Justices*) of our Court of Queen's Bench (*or Common Pleas*) for Upper Canada, it was by the said Chief Justice (*or Justices*) adjudged and determined that —— of —— had usurped, and did then usurp, the office of —— [and that —— was (*or were*) duly elected thereto, and ought to have been returned, and was (*or were*) entitled in law to be received into, and to use, exercise and enjoy the said office], all which has by the said Chief Justice (*or Justices*) been duly certified into our Court of Queen's Bench (*or Common Pleas*), pursuant to the statute in that behalf. Now, we being willing that speedy justice be done in this behalf, as it is reasonable, command that the said (*the person or persons, naming him or them, whose election has been declared invalid*) do not in any manner concern himself (*or themselves*) in or about the said office, but that he (*or they*) be absolutely forejudged, removed and excluded from further using or exercising the same, under pretence of his (*or their*) election thereto.* [And we do further command that the said (*the person or persons, naming him or them, who has or had been adjudged lawfully elected*) be forthwith admitted, received and sworn into the said office, to use, exercise and enjoy the same.] And we do hereby command you and every of you to obey, observe, and do all and every act, matter and thing that may be necessary, on the part of you or any of you in the premises according to the purport, true intent and meaning of these presents, and of the statutes in that behalf, and that you make known to our Court of Queen's Bench (*or Common Pleas*) at Toronto, on the —— day of —— how this writ shall have been executed.

Witness, &c.

FORM OF A WRIT OF MANDAMUS,

When neither the election of the person or persons (less than the whole number of members of the Municipal Corporation) who has (or have) been returned, nor the person or persons claimed to be returned is (or are) held valid, and for a new election.

Victoria, &c.

To the Municipal Corporation of —— and to any returning officer or other person or persons to whom it shall of right belong to do any act necessary to be done, touching the election hereinafter commanded to be held:

Whereas (*as in the last precedent to the asterisk, omitting the part between brackets, and then proceed as follows:*) and we do further command that you, the said Municipal Corporation, and any Returning Officer or other person or persons, or such of you to whom the same shall of right belong, that you do, pursuant to and according to the statute in that behalf, cause an election to be as speedily held as shall be lawful, for the election of a person (*or persons*) in the place or stead of the said —— who has (*or have*) been removed as aforesaid; and that you, or such of you to whom the same doth of right belong, do administer to the person (*or persons*) who shall be so elected, the oath (*or oaths*) if any, in that behalf by law directed; and that you admit, or cause to be admitted, such person (*or persons*) so elected into the said office, and that you, the said Municipal Corporation, do

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show how this writ shall have been executed to our Court of Queen's Bench (*or Common Pleas*), at Toronto, on the —— day of ——.

Witness, &c.

FORM OF A WRIT OF MANDAMUS,

Directed to the Sheriff, where the elections of all the members of any Municipal Corporation have been adjudged invalid, and for the admission of those adjudged to have been legally elected.

Victoria, &c.

To the Sheriff of the County (*or United Counties*) of ——, **Greeting**:

Whereas (*the same as in the first precedent of a mandamus, to the end of the words "adjudged and determined," then say*) that the election (*or elections*) of all the members of the Municipal Corporation of ——, returned as elected at the election (*or elections*) of members of the said corporation held (*describing the time or times and place or places of such election* [or elections]) was (*or were*) invalid or void in law, and that (*naming them all*) had usurped (*proceeding as in the first precedent, adopting the plural form, to the asterisk, and then as follows:*) and we do hereby further command you, the said Sheriff, that you do, pursuant to the statute in that behalf, admit and return and swear into, or cause the said (*naming the person adjudged to have been duly elected*) to be forthwith admitted or returned, and sworn into the said office, to use, exercise and enjoy the same, and that you do and perform, or cause to be done and performed, all and every act or acts, thing or things necessary to be done and performed in the premises: and we hereby command and strictly enjoin all and every person or persons to whom the same shall lawfully belong, to be aiding and assisting you, and to do all and every lawful and necessary act to be done by him or them in the premises, according to the purport, true intent and meaning of these presents, and of the statutes in that behalf; and how you shall have executed this writ make known to our Court of Queen's Bench or Common Pleas, at Toronto, on the —— day of —— next, and have then there this writ.

Witness, &c.

FORM OF A MANDAMUS,

To the Sheriff, when the elections of all the members of any Municipal Corporation have been adjudged invalid, and requiring others to be elected.

Victoria, &c.

To the Sheriff, &c., (*as in the last precedent to the asterisk, omitting the part between brackets, and adopting the plural form, then concluding as follows:*) and that you do every act necessary to be done by you in order to the due election and admission of members of the said corporation, in the place and stead of the persons whose elections have been so declared invalid; and we hereby command, and strictly enjoin all and every person and persons (*continuing as in the last precedent to the end.*)

Witness, &c.

The form of writs of execution for costs in any such case may be as follows:—

FI. FA. AGAINST DEFENDANT FOR RELATOR'S COSTS.

UPPER CANADA.

Victoria, &c.

To the Sheriff of the County of ——, Greeting:

We command you, that you levy or cause to be levied, of the goods and chattels of C. D., late of ——, [*add the description of the Returning Officer, where the*

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execution is against him] the sum of ——, which hath been lately adjudged to A. B. of ——, in our Court of Queen's Bench (*or Common Pleas*), at Toronto, according to the form of the statute in such case made and provided, for his costs by him laid out and expended in the prosecuting of a certain writ of summons in the nature of a quo warranto, issued out of our said Court against ——, at the relation of the said A. B., for usurping the office of ——, in our ——, of ——, in your county, [*add, when the Returning Officer is a party*, "to which proceeding the said —— was made a party,"] and whereof the said C. D. [&c.] is convicted, as in our said court appears of record, and that you have that money before our Court of Queen's Bench (*or Common Pleas*), at Toronto, on the —— day of —— Term, to satisfy the said A. B. for his costs aforesaid, and have you then there this writ.

Witness, &c.

FI. FA. AGAINST THE RELATOR FOR THE DEFENDANT'S COSTS.

UPPER CANADA.

Victoria, &c.

To the Sheriff of the County (*or United Counties*) of ——, Greeting:

We command you, that you levy, or cause to be levied, of the goods and chattels of A. B., late of ——, the sum of ——, which hath lately been adjudged to C. D. of —— in our Court of Queen's Bench (*or Common Pleas*), at Toronto, according to the form of the statute in such case made and provided, for his costs by him laid out and expended in his defence upon a certain writ of summons in the nature of a quo warranto, issued out of our said court against the said C. D., upon the relation of the said A. B., for usurping the office of —— in our —— of —— in your County (*or Counties*). [*If the Returning Officer has been made a party, add here*, "to which proceeding E. F., the Returning Officer, at the election of the said C. D. to the said office, was made a party,") whereof the said A. B. is convicted as in our said court appears of record; and that you have that money before our said court, at Toronto, on the —— day of —— Term, to satisfy the said C. D. for his costs aforesaid, and have you then there this writ.

Witness, &c.

N B.— When the Returning Officer has been made a party, and is entitled to costs, the fieri facias must be framed accordingly.

16. Contempts in disobeying writs of summons, certiorari, mandamus, or other process, rule or order of either court, or of any judge thereof acting in the execution of the powers conferred by the statutes 12 Vic. ch. 81, and 13 & 14 Vic. ch. 64, are to be certified into the court from which the writ of summons issued, to be dealt with like other contempts of such court in other cases.

17. If any of the forms given in the foregoing rules shall not be found adapted to a case which may arise in reference to proceedings connected with or resulting from the trial of the validity of municipal elections, changes are to be made therein when necessary, at the discretion of the judge who shall try and determine the case, to adapt the same to such particular case.

18. None of the proceedings which shall be had in any case for trying the validity of any election, or which shall follow the determina-

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tion thereof, shall be set aside or held void on account of any irregularity or defect, which shall not in the opinion of the court or judge before whom the objection is made, be deemed such as to interfere with the just trial and adjudication of the case upon the merits.

19. *Costs.*—The same table as authorized by the fifteenth rule of Hilary Term last and any disbursements necessarily made, and not allowed for in the said table, may be taxed according to the table of fees generally established in the court in which the proceedings shall be conducted.

JNO. B. ROBINSON, C.J.
J. B. MACAULAY, C.J. *C.P.*
A. MCLEAN, J.
WM. H. DRAPER, J.
R. B. SULLIVAN, J.
ROBERT BURNS, J.

The costs which will be taxable under the foregoing orders may be stated as follows:—

ATTORNEY.

	£	s.	d.
Instructions—To apply for a writ of summons or defend against.....	0	5	0
Statement—Of the grounds of complaint, including fair copy.....	0	5	0
Affidavits—Whether special or common, per folio of 100 words, and copies thereof when necessary.....	0	0	6
Recognizance—Drawing	0	2	6
Attendances, Special—at Chambers, for writ of summons, to serve writ, upon the argument, or to hear judgment.....	0	2	6
Attendances, Common—all other attendances not mentioned as special, each.....	0	1	3
Writs—Preparing writ of summons, writ of certiorari, mandamus, trial or writ of execution each.....	0	2	6
Fee on each writ.....	0	5	0
Notices—Indorsement on writ of summons, every other indorsement upon writ, when required to be made, and all common notices, each.....	0	1	3
Copies—Of statement or other papers and documents, when required to be made or served, half the amount allowed for the original, and when no specific sum is allowed, then copies of papers required, or which may be directed to be made, furnished or served, to be allowed per folio of 100 words.....	0	0	6
Issues—When directed to be tried, preparing same.....	0	5	0
Disbursements—Postages actually paid, mileage where it is necessary to employ parties to serve writs, papers, &c., the actual number of miles travelled to perform the service, per mile	0	0	6

The affidavit must state the number of miles actually travelled, and also that the charge has been paid.

N.B.—No instructions to be allowed nor attendances to swear affidavits. No instructions to be allowed for briefs or charge for briefs.

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COUNSEL.

Fee—For argument upon the return of the writ of summons, if argued by counsel	1	5	0
To be increased at the discretion of the judge, according to the importance of the case.			
Fee—Upon the trial of issues upon writ of trial at the County Court...	1	10	0

CLERKS OF THE CROWN AND PLEAS AND THEIR DEPUTIES.

For taking recognizance	0	2	6
For signing and sealing each writ	0	1	3
For each order or rule of court	0	2	6
For filing each paper	0	0	4
Copies of papers, per folio of 100 words	0	0	6

COMMISSIONER.

For taking recognizance	0	2	6
Swearing each affidavit	0	1	0

CLERK IN CHAMBERS.

For each fiat granted by a judge for a writ	0	1	3
For filling each paper	0	0	
For making up each final judgment of the judge and returning the same into court	0	5	0
Copies of papers, per folio of 100 words	0	0	6
Witnesses, jurors, sheriff and other officers, the same fees and allowances as for similar services at Nisi Prius, and in the Courts of Queen's Bench and Common Pleas.			

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APPENDIX.

CONSOLIDATED STATUTES OF CANADA.

CHAPTER XXXVIII.

AN ACT RESPECTING THE PRESERVATION OF THE PUBLIC HEALTH.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

This Act to be put in force temporarily by proclamation, when the Province is threatened with any formidable epidemic.

1. Whenever this Province, or any part thereof, or place therein, appears to be threatened with any formidable epidemic, endemic or contagious disease, the Governor may, by Proclamation, to be by him from time to time issued, by and with the advice and consent of the Executive Council, declare this Act to be in force in this Province, or in any part thereof, or place therein, mentioned in such Proclamation; and it shall thereupon be in force accordingly; and the Governor may in like manner from time to time, as to all or any of the parts or places to which any such Proclamation extends, revoke or renew any such Proclamation; and, subject to revocation and renewal as aforesaid, every such Proclamation shall have effect for six months, or for any shorter period in such Proclamation expressed. 12 Vic. cap. 8, sec. 1.

Parts of cap. 59 of Con. Stat. of U. C. suspended in part as to places affected by such proclamation.

2. Upon the issuing of any such Proclamation, and whilst the same is in force, the first, second, third and sixth sections of the fifty-ninth chapter of the Consolidated Statutes for Upper Canada, intituled, *An Act respecting the Public Health*, and so much of the fifth section thereof as provides for the trial and punishment of any person accused of wilfully disobeying or resisting any lawful order of any Health officers acting under the said Act, or of wilfully resisting or obstructing such Health officers in the execution of their duties, shall be suspended as to every place mentioned in such Proclamation, or being within any part of this Province included thereby; but any person accused of having wilfully disobeyed or resisted such order, or resisted or obstructed such officer, before the issuing of the Proclamation, may nevertheless be tried and dealt with as if such Proclamation had not been issued. 12 Vic. cap. 8, sec. 2.

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After issuing such Proclamation, the Governor may appoint a Central Board of Health.

3. From time to time after the issuing of any such Proclamation, and whilst it is in force, the Governor may, by commission under his hand and seal, appoint five or more persons to be "The Central Board of Health," and also such officers and servants as he deems necessary to assist the Board; and the powers and duties of the said Board may be exercised and executed by any three members thereof; and during any vacancy in the said Board, the continuing members or member may act as if no vacancy had occurred.

Duration of such Commission.

2. And every such commission shall *ipso facto* be determined by the revocation of the Proclamation under which it issued, as to all the places included in such Proclamation, or by the expiration of six months from the date of such Proclamation, or of any shorter period expressed in such Proclamation, as that during which it is to be in force; unless such Proclamation be renewed as to all or some of such parts and places. 12 Vic. cap. 8, sec. 3.

Chief Municipal officer of every place affected by such proclamation to take steps for constituting a Local Board of Health.

4. From time to time, while any such Proclamation is in force, the Mayor or other head of the Municipal Corporation, Inspecting Trustee or other chief Municipal officer, of any and every place mentioned in such Proclamation, or included thereby, may call a special meeting of the Council or other Municipal Corporation, or of the Police Trustees of such place, over which he presides, for the purpose of nominating, and such Municipal Corporation or Police Trustees shall nominate accordingly not less than three persons, resident within the limits of their respective jurisdictions (or in the case of a City, Town or Village within seven miles thereof), to be "The Local Board of Health" for such place:

Special meeting for their election to be called within a certain time after written requisition from inhabitant householders.

2. And such Mayor, or other head of such Municipal Corporation, Inspecting Trustee, or other chief Municipal officer, shall call such special meeting within two days from the receipt of a written requisition to that effect, signed by ten or more inhabitant householders of the place under the jurisdiction of the body over which he presides, on pain of being personally liable to the penalty hereinafter mentioned; and if at any time while any such Proclamation is in force, it is certified to the Governor by any ten or more inhabitant householders of any place included in such Proclamation, that the Mayor or other head of such Municipal Corporation, or Inspecting Trustee, or other chief Municipal officer of such place, has failed to comply with such requisition, within such time as aforesaid, the Governor-in-Council may forthwith appoint not less than three persons resident within the limits

If no meeting called within the prescribed time, Governor may appoint Local Board.

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of such place (or in the case of a City, Town or Village, within seven miles thereof,) to be the Local Board of Health for such place.

Duration of Local Board.

3. Every nomination or appointment of a Local Board of Health, under this Act, shall *ipso facto* be determined by the revocation, as to the place within the limits of which such Local Board is authorized to act, or as to any place in which it is included, or as to the whole Province, of the Proclamation under which such Local Board was appointed, or by the expiration of six months from the date of such Proclamation, or of any shorter period expressed in such Proclamation as that during which it is to be in force; unless such Proclamation be renewed as to such place, or any place in which it is included, or as to the whole Province. 12 Vic. cap. 8, sec. 4.

Central Board of Health may issue regulations and directions for the prevention or mitigation of disease.

5. The Central Board of Health, or any three or more members thereof, may from time to time issue such regulations as they think fit, for the prevention, as far as possible, or the mitigation of such epidemic, endemic or contagious diseases, and may revoke, renew or alter any such regulations, or substitute such new regulations as to them or any three of them appear expedient.

Tenor of such regulations and directions.

2. The said Board may by such regulations provide for the frequent and effectual cleansing of streets, by the Surveyors or Overseers of Highways, and others intrusted with the care and management thereof, or by the owners or occupiers of houses and tenements adjoining thereto; and for the cleansing, purifying, ventilating and disinfecting of houses, dwellings, churches, buildings and places of assembly by the owners and occupiers, and persons having the care and ordering thereof; for the removal of nuisances, for the speedy interment of the dead, and generally for preventing or mitigating such epidemic, endemic or contagious diseases, in such manner as to the said Central Board seems expedient.

Central Board may authorize and require Local Boards to superintend and see to the execution of such regulations.

3. The said Central Board may, by any such regulations, authorize and require the Local Boards of Health to superintend and see to the execution of any such regulations, and (where it appears that there may be default or delay in the execution thereof, by want or neglect of such Surveyors or others intrusted as aforesaid, or by reason of poverty of occupiers, or otherwise), to execute or aid in executing the same within their respective limits, and to provide for the dispensing of medicines, and for affording to persons afflicted by or threatened with such epidemic, endemic or contagious diseases,

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such medical aid as may be required, and to do and provide all such acts, matters and things as are necessary for superintending or aiding in the execution of such regulations, or for executing the same, as the case may require.

They may extend to authorize the removal of parties from their dwellings under certain circumstances, and placing them in sheds or tents.

4. The said Central Board of Health may also, by any such regulations, authorize and require the Local Boards of Health, in all cases in which diseases of a malignant and fatal character are discovered to exist in any dwelling-house or out-house, temporarily occupied as a dwelling, situated in an unhealthy or crowded locality, or being in a neglected or filthy state, in the exercise of a sound discretion, and at the proper costs and charges of such Local Boards of Health, to compel the inhabitants of any such dwelling-house or out-house to remove therefrom, and to place them in sheds or tents, or other good shelter, in some more salubrious situation, until measures can be taken, by and under the directions of the Local Boards of Health, for the immediate cleansing, ventilation, purification and disinfection of the said dwelling-house or out-house.

To what places these regulations shall extend.

And how long they shall continue in force.

5. And the directions and regulations to be issued as aforesaid, shall extend to all parts or places in which this Act shall for the time being be in force under any such Proclamation as aforesaid, unless such regulations be expressly confined to some of such parts or places, and then to such parts or places as in such directions and regulations shall be specified, and (subject to the power of revocation and alteration herein contained), shall continue in force so long as this Act shall be in force under such Proclamation, in the parts or places to which such regulations extend. 12 Vic. cap. 8, sec. 5.

Members of Local Boards of Health to be called Health Officers.

And may enter dwellings in certain cases.

6. The members of the said Local Boards of Health shall be called Health Officers, and any two or more of them acting in the execution of any such regulations as aforesaid, at reasonable times in the day-time, may enter and inspect any dwelling or premises, if there be ground for believing that any person has recently died of any such epidemic, endemic, or contagious disease, in such dwelling or premises, or that there is any filth or other matter dangerous to health therein or thereupon, or that necessity otherwise exists for executing, in relation to such dwelling or premises, all or any of such regulations as aforesaid

And may call for assistance to enforce obedi-

2. And in case the owner or occupier of any such dwelling or premises neglects or refuses to obey the orders given by such Health Officers, in pursuance of such regulations, such Health Officers may call to their assistance all Constables and

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Peace Officers, and such other persons as they think fit, and may enter into such dwelling or premises, and execute or cause to be executed therein such regulations, and remove therefrom and destroy whatsoever, in pursuance of such regulations, it is necessary to remove and destroy for the preservation of the public health. 12 Vic. cap. 8, sec. 6.

ence to their lawful orders if necessary.

7. The expenses incurred by the said Central Board of Health shall be defrayed out of any moneys appropriated by the Provincial Parliament for that purpose; and the expenses incurred by the said Local Boards of Health in the execution or in superintending the execution of the regulations of the Central Board, shall be defrayed and provided for in the same manner and by the same means as expenses incurred by the Municipal Corporations, Councils, or other Municipal bodies of or having jurisdiction over the respective places for which such Local Boards of Health were appointed then, are by law required to be defrayed and provided for. 12 Vic. c. 8, s. 7.

Expenses of Central Board to be defrayed by the Province

Those of Local Boards by the respective localities.

8. No direction or regulation of the said Central Board of Health shall have any force or effect until it has been confirmed by the Governor-in-Council, and has thereafter been published in the *Canada Gazette;* and every Proclamation of the Governor-in-Council, under this Act, shall also be published in the *Canada Gazette;* and such publication of any such Proclamation or regulation shall be conclusive evidence of the Proclamation or regulation so published, and of the confirmation of such regulation as aforesaid, and of the dates thereof respectively, to all intents and purposes; and every such Proclamation and regulation shall forthwith, upon the issuing thereof, be laid before both Houses of the Provincial Parliament, if it be then sitting, and if not, then within the fourteen days next after the commencement of the then next session of Parliament. 12 Vic. cap. 8, sec. 8.

Regulations of Central Board to be sanctioned by the Governor, and published in the *Canada Gazette.*

Publication to be evidence of sanction, &c.

Proclamations, &c., under this Act to be laid before Parliament.

9. Upon the publication of any such regulations as aforesaid, and whilst they continue in force, all By-laws made by the Town Council, Municipal Corporation, or other like body of any place to which such regulations or any of them relate, made for preserving the inhabitants thereof from contagious diseases, or for any other of the purposes for which such regulations are by this Act required to be issued, shall become and be suspended.

Local By-laws on the subject of health to be suspended while such regulations continue in force.

2. And upon the appointment, and during the existence of a Local Board of Health, under this Act, for any such place, any Board of Health or Health Officer, or other like officer,

Also, Boards of Health or Health Officers.

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cers under such By-laws, &c.

or any Committee appointed under any such by-law, shall be and remain deprived and relieved of all powers, authorities and duties conferred and imposed upon him or them by any such by-law; but in any interval between the issuing of such regulations and the appointment of such Local Board of Health, he or they shall exercise and perform such powers, authorities and duties, in conformity with such regulations, and shall act in every respect as if he or they were a Local Board of Health appointed under this Act. 12 Vic. c. 8, s. 9.

Penalty on persons obstructing the execution of this Act, or refusing to comply with its requirements, or with the regulations of the Central Board of Health.

10. Whosoever wilfully obstructs any person acting under the authority or employed in the execution of this Act, or wilfully violates any regulation issued by the Central Board of Health under this Act, or neglects or refuses to comply with such regulations, or with the requirements of this Act in any matter whatsoever, shall be liable, for every such offence, to a penalty not exceeding twenty dollars, to be recovered by any person before any two Justices, and to be levied by distress and sale of the goods and chattels of the offender, with the costs of such distress and sale, by warrant under the hands and seals of the Justices before whom the same are recovered, or any other two Justices; and if it appears to the satisfaction of such Justices, before or after the issuing of such warrant, either by the confession of the offender or otherwise, that he hath not goods and chattels within their jurisdiction sufficient to satisfy the amount, they may commit him to any Gaol or House of Correction for any time not exceeding fourteen days, unless the amount be sooner paid, in the same manner as if a warrant of distress had issued, and a return of *nulla bona* had been made thereon. 12 Vic. cap. 8, sec. 10—*part*.

To be recovered before two Justices,

Who may commit the offender to gaol in certain cases.

Applications of penalties.

11. All penalties whatever recovered under this Act shall be paid to the Treasurer, and applied in aid of the rates or funds, of the place in which such penalties have been incurred respectively; and all offences committed against this Act, while the same is in force in this Province, or in any part thereof, shall be prosecuted, and the parties committing the same convicted and punished therefor, as herein provided, as well after as during the time that this Act shall be declared to be in force in or by any such Proclamation or Proclamations as aforesaid. 12 Vic. cap. 8, sec. 10.

Certiorari taken away.

12. No order, nor any other proceeding, matter or thing, done or transacted in or relating to the execution of this Act, shall be vacated, quashed or set aside for want of form, or be removed or removable by *certiorari*, or other writ or process

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whatsoever, into any of the Superior Courts in this Province. 12 Vic. cap. 8, sec. 11.

Interpretation of certain words.

13. In this Act, the following words and expressions shall have the meanings hereinafter assigned to them, unless such meanings be repugnant to or inconsistent with the context, that is to say: the words "two Justices" shall mean two or more Justices of the Peace acting for the place where the matter or any part of the matter requiring the cognisance of such two Justices arises, assembled or acting together; the word "place" shall mean a City, Town, Borough, Village, Township, Parish, or any other territorial division recognized or designated by law as a separate Municipality or Municipal Division; the word "street" shall include every highway, road, square, row, lane, mews, court, alley and passage, whether a thoroughfare or not. 12 Vic. cap. 8, sec. 12.

CON. STAT. CAN.—CHAPTER LIII.

AN ACT RESPECTING CERTAIN WEIGHTS AND MEASURES.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Hundred-weight to be 100lbs. avoirdupois.

Ton weight to be 2000lbs.

1. The hundred-weight for weighing all goods, wares and other commodities whatsoever, sold by the hundred-weight or ton-weight in this Province, shall consist of one hundred pounds avoirdupois, and not of one hundred and twelve pounds, as before the fourth day of May, 1859; and the ton-weight used for the said purposes shall consist of twenty hundred-weights, as hereinabove established, or of two thousand pounds avoirdupois, and not of two thousand two hundred and forty pounds, as before the said day; and the said hundred-weight and ton-weight, as hereinabove established, with their parts, multiples and proportions, shall be the standard weights in this Province for the weighing of all such goods, wares and commodities as aforesaid: And in all cases in which a duty or toll is imposed by law upon or by the hundred-weight or the ton, such duty or toll shall be chargeable on the hundred-weight or ton, as hereinabove established. 22 Vic. (1859), cap. 21, sec. 4.

Act to apply to duties, tolls, &c.

Laws in force as to weights and

2. All and every the laws in force in Upper and Lower Canada respectively, relating to the inspection and adjustment of weights and measures in the said sections of the Province,

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measures to apply to those hereby established.

respectively, shall extend and apply to the standards of the ton-weight and hundred-weight hereinabove established, and to the several parts and proportions thereof; the said standard weights hereinabove established being, as regards such inspection and adjustment, and the duties of the Inspectors of Weights and Measures and others under the said Acts, and the penalties to be incurred for infraction thereof, in all respects substituted for the standard hundred-weight and ton in use before the fourth day of May, one thousand eight hundred and fifty-nine; and no other standard of the hundred-weight or ton than that hereinabove established shall be used in any part of this Province. (22 Vic. (1859), cap. 21, secs. 3, 5.

Standard weight of different kinds of grain, &c.

3. The following shall be the Standard Weights which in all cases shall be held to be equal to the Winchester bushel of the grain, pulse or seeds opposite to which they are set:

Wheat	Sixty pounds,
Indian Corn	Fifty-six pounds,
Rye	Fifty-six pounds,
Peas	Sixty pounds,
Barley	Forty-eight pounds,
Oats	Thirty-four pounds,
Beans	Sixty pounds,
Clover Seed	Sixty pounds,
Timothy Seed	Forty-eight pounds,
Buck Wheat	Forty-eight pounds.

16 Vic. cap. 193, sec. 2, and 18 Vic. cap. 15.

Standard weights of certain articles.

4. The following shall be the Standard Weights which in all cases shall be held to be equal to the Winchester bushel of the articles opposite to which they are respectively set, namely:

Potatoes, turnips, carrots, parsnips, beets and onions	Sixty pounds,
Flax seed	Fifty pounds,
Hemp seed	Forty-four pounds,
Blue Grass seed	Fourteen pounds,
Castor beans	Forty pounds,
Salt	Fifty-six pounds,
Dried apples	Twenty-two pounds,
Dried peaches	Thirty-three pounds,
Malt	Thirty-six pounds.

22 Vic. (1859), cap. 21, sec. 1.

5. Upon any sale and delivery of any description of grain, pulse or seeds, or other articles mentioned in this Act, and in

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every contract for the sale or delivery of any such grain, pulse, seeds or other articles, the bushel shall be taken and intended to mean the weight of a bushel as regulated by this Act, and not a bushel in measure, or according to any or greater or less weight, unless the contrary appears to have been agreed upon by the parties. 16 Vic. cap. 193, sec. 3, and 22 Vic. (1859), cap. 21, sec. 2. Effect of this Act upon contract.

6. Upon any sale and delivery of any description of grain, pulse or seeds, or other articles mentioned in this Act, and in every contract for the sale or delivery of any such grain, pulse, seeds or other articles, the *minot* shall be taken and intended to mean the weight of a bushel as regulated by this Act, and not a *minot* or bushel in measure, or according to any greater or less weight, unless the contrary appears to have been agreed upon by the parties. 18 Vic. cap. 15, sec. 2, and 22 Vic. (1859), cap. 21, sec. 2. What shall be understood by the word *minot*.

7. No part of this Act shall apply to any contract made in Upper Canada before the fifteenth day of June, one thousand eight hundred and fifty-three, or in Lower Canada before the first day of May, one thousand eight hundred and fifty-five; nor shall anything in the first, second and fourth sections of this Act, or in any other part thereof as referring to the said sections, apply to or affect any contract made before the fourth day of May, one thousand eight hundred and fifty-nine. 16 Vic. cap. 193; 18 Vic. cap. 15, and 22 Vic. (1859), cap. 21, sec. 6.) This Act not to affect contracts before certain dates

8. The provisions of chapter fifty-six of the Consolidated Statutes for Upper Canada (respecting Weights and Measures) shall be subject to and controlled by those of this Act, as if they were incorporated in the said Act. Provisions cap. 56, Con. Stat. U. C. to be controlled by this Act.

CON. STAT. CAN.—CHAPTER LXXXII.

AN ACT RESPECTING THE CALLING AND ORDERLY HOLDING OF PUBLIC MEETINGS.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

It being the undoubted right of Her Majesty's subjects to meet together in a peaceable and orderly manner, not only when required to do so in compliance with the express directions of law, but at such other times as they may deem it expedient so to meet for the consideration and discussion of matters Preamble.

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of public interest, or for making known to their Gracious Sovereign or her Representative in this Province, or to both or either Houses of her Imperial or Provincial Parliaments their views respecting the same, whether such be in approbation or condemnation of the conduct of public affairs; and it being expedient to make legislative provision for the calling and orderly holding thereof, and the better preservation of the public peace at the same; Therefore,

Meetings within the protection of this Act.

1. All Public Meetings of the inhabitants, or of any particular class of the inhabitants of any District, County, Riding, City, Town, Township, Ward or Parish in this Province, which are required by law, and summoned or called in the manner hereinafter by the fourth section of this Act prescribed, shall be and be deemed to be Public Meetings, within the meaning of this Act. 7 Vic. cap. 7, sec. 1.

Meetings called by Sheriffs or two magistrates to be within protection of this Act.

2. All Public Meetings of the inhabitants, or of any particular class of the Inhabitants of any District, County, Riding, City, Town, Township, Ward or Parish in this Province, called by the High Sheriff of any such District or County, or by the Mayor or other chief Municipal officer of any such City or Town respectively, in the manner hereinafter by the fifth section of this Act prescribed, upon the requisition of any twelve or more of the freeholders, citizens or burgesses of such District, County, Riding, Town, Township, Ward or Parish, having a right to vote for members to serve in the Provincial Parliament in respect of the property held by them within such District, County, Riding, City, Town, Township, Ward or Parish respectively; and all such meetings, called by any two or more Justices of the Peace, resident in any such District, County, Riding, City, Town, Township, Ward or Parish respectively, upon a like requisition from twelve or more of such freeholders, citizens or burgesses, shall be and be deemed to be Public Meetings, within the meaning of this Act. 7 Vic. cap. 7, sec. 2.

Meetings declared by two magistrates to be within the protection of the Act to be so.

3. All Public Meetings of the inhabitants, or of any particular class of the inhabitants of any District, County, Riding, City, Town, Township, Ward or Parish in this Province, declared to be public meetings within the meaning of this Act, by any two Justices of the Peace resident in such District, County, Riding, City, Town, Township, Ward or Parish, in the manner hereinafter by the sixth section of this Act prescribed, shall be and be deemed to be Public Meetings, within the meaning of this Act. 7 Vic. cap. 7, sec. 3.

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Manner of bringing meetings required by law within protection of this Act.

4. In every notice or summons for calling together any such public meeting as in the first section of this Act is mentioned, there shall be contained a notice that such meeting, and all persons attending the same, will be within the protection of this Act, and requiring all persons to take notice thereof, and govern themselves accordingly, and which part of such notice or summons may be in the form or to the effect following:

And be it known, that the meeting to be held in pursuance hereof, is called in conformity with the provisions of the *Act respecting the calling and orderly holding of Public Meetings;* and that the said meeting, and all persons attending the same, will therefore be within the protection of the said Act; of all which premises all manner of persons are hereby in Her Majesty's name most strictly charged and commanded, at their peril, to take especial notice, and to govern themselves accordingly. 7 Vic. cap. 7, sec. 4.

Manner of bringing meetings called by Sheriffs, &c., within protection of this Act.

5. The notice to be issued by the High Sheriff of any District or County, or by the Mayor or other chief Municipal officer of any City or Town, or by two or more Justices of the Peace, for calling any such public meeting, as in the second section of this Act is mentioned:

1. Shall be issued at least three days previous to the day upon which such meeting is appointed to be held;

2. Shall set forth the names of the requisitionists, or of a competent number of them;

3. That such meeting is called in conformity with the provisions of this Act; and,

4. That such Meeting, and all persons attending the same, will be within the protection of this Act, and that all persons are required to take notice thereof, and govern themselves accordingly; and,

5. Such notice may be in the form or to the effect following:

To the Inhabitants of the District of A. (*or as the case may be*), and all others Her Majesty's subjects whom it doth or may in any wise concern:

Whereas I, A. B., High Sheriff of, &c. (*or* We, C. D. and E. F.) two (*or whatever the number may be*) of Her Majesty's Justices of the Peace for the District of A., resident within the said District (*or* resident within the said County of B., *or as the case may be*), having received a requisition, signed by I. J. K. L., &c. &c (*inserting the names of at least twelve of the requisitionists, and as many more as conveniently may be,*

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and mentioning the number of the others thus), and fifty-six (*or as the case may be*) others, who (*or* twelve of whom) are freeholders of the said District (*or* citizens of the said City), having a right to vote for members to serve in the Provincial Parliament, in respect of the property held by them within the said District (*or* City, *&c., as the case may be*), requesting me (*or* us) to call a Public Meeting of (*here recite the requisition*). And whereas I (*or* we) have determined to comply with the said requisition; now therefore, I (*or* we) do hereby appoint the said Meeting to be held at —— (*here state the place*) on ——, the —— day of —— next (*or* instant) at —— of the clock in the ——noon, of which all persons are hereby required to take notice. And whereas the said Meeting hath been so called by me (*or* us) in conformity with the provisions of the *Act respecting the calling and orderly holding of Public Meetings*, the said Meeting, and all persons who may attend the same, will therefore be within the protection of the said Act; of all which premises all manner of persons are hereby in Her Majesty's name most strictly charged and commanded, at their peril, to take especial notice, and to govern themselves accordingly.

Witness my hand (*or* our hands), at ——, in the District of ——, this —— day of ——, 18—.

A. B., Sheriff.
(*or*)
C. D., J. P.
E. F., J. P.

7 Vic. cap. 7, sec. 5.

By private persons within the protection of this Act.

6 Upon information on oath, before any Justice of the Peace, that any Public Meeting of the inhabitants, or of any particular class of the inhabitants of any District, County, Riding, City, Town, Township, Ward or Parish, not being a public meeting of the description mentioned in the first section of this Act, or a public meeting called in the manner referred to in the second section of this Act, is appointed to be held at any place within the jurisdiction of such Justice, and that there is reason to believe that great numbers of persons will be present at such meeting: Any two Justices of the Peace, having jurisdiction within the District, County, City or Town, within which such meeting is appointed to be held, may give notice of such meeting, and may declare the same, and declare all persons attending the same, within the protection of this Act, and require all persons to take notice thereof and govern themselves accordingly; and such notice or declaration may be in the form or to the effect following:

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To the Inhabitants of the District of A. (*or as the case may be*), and all others Her Majesty's subjects, whom it doth or may in any wise concern :

Whereas by information on oath, taken before D. E., Esquire, one of Her Majesty's Justices of the Peace for the District of C. (*or* City, *or as the case may be*), within which the Meeting hereinafter mentioned is appointed to be held, it appears that a Public Meeting of the inhabitants (*or* householders, *&c., as the case may be*) of the District of G. (*or as the case may be*) is appointed to be held at ——, in the said District (*or as the case may be*), on ——, the —— day of —— next (*or* instant), at —— of the clock in the ——noon (*or* at some other hour on the same day); and that there is reason to believe that great numbers of persons will be present at such Meeting; and whereas it appears expedient to us, C. D. and E. F., two (*or whatever the number may be*) of Her Majesty's Justices of the Peace, having jurisdiction within the said District (*or as the case may be*), that, with a view to the more orderly holding of the said Meeting, and the better preservation of the public peace at the same, the said Meeting, and all persons who may attend the same, should be declared within the protection of *An Act respecting the calling and orderly holding of Public Meetings;* Now therefore, in pursuance of the provisions of the said Act, and the authority in us vested by virtue of the same, we, the said Justices, do hereby give notice of the holding of the said Meeting, and do hereby declare the said Public Meeting, and all persons who may attend the same, to be within the protection of the said Act of Parliament; of all which premises all manner of persons are hereby in Her Majesty's name most strictly charged and commanded, at their peril, to take especial notice, and to govern themselves accordingly.

Witness our hands, at ——, in the District of ——, this —— day of ——, 18—.

C. D., J. P.
E. F., J. P.
&c.

7 Vic. cap. 7, sec. 6.

7. Every Sheriff, Mayor, Justice of the Peace, or other person who calls any such public meeting as is mentioned in the second section of this Act, shall give public notice thereof, as extensively as he reasonably may, by causing to be posted and distributed throughout the District, County, Riding, City, Town, Township, Ward or Parish, for which the same is

Sheriffs or Justice, &c. calling meetings on requisition to give certain notices.

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called, a sufficient number of printed or written copies of the notice calling the same. 7 Vic. cap. 7, sec. 7.

Justices declaring meetings to be within protection of Act to give certain notices.

8. The Justices of the Peace who declare any public meeting, about to be held, to be a public meeting within the protection of this Act, as in the third section of this Act mentioned, shall give public notice of its having been so declared, by causing to be posted and distributed throughout the District, County, Riding, City, Town, Township, Ward or Parish, for which the same is so called, as many printed or written copies of the notice or declaration issued by them in that behalf, as may be reasonably necessary for that purpose, and as the time appointed for the holding such meeting reasonably admits. 7 Vic. cap. 7, sec. 8.

Sheriffs and Justices calling and declaring meeting under this Act to attend the same.

9. Every Sheriff, Mayor, Justice of the Peace, or other person, who either calls any public meeting under the provisions of the second section of this Act, or declares any meeting called by others to be a public meeting within the protection of this Act, under the provisions of the third section hereof, shall attend such meeting; and whether such Sheriff, Mayor, Justice of the Peace or other person is appointed by such public meeting to take the chair and preside over the same or not, every such Sheriff, Mayor, Justice of the Peace, and other person, shall continue at or near the place appointed for holding such public meeting, until the same has dispersed, and shall afford all such assistance as may be in his power, in preserving the public peace thereat. 7 Vic. cap. 7, sec. 9.

Chairman to read requisition and make proclamation for the preservation of order.

10. Every person required by law, or who has, in the usual way, been appointed at such public meeting to preside over the same, shall commence the proceedings of the meeting by causing the summons or notice calling the meeting, or the declaration whereby the same is declared to be a public meeting under the protection of this Act, to be publicly read. 7 Vic. cap. 7, sec. 10.

Chairman to remove disorderly persons, and convict on view of disturbance.

11. Any person required by law, or who has been appointed at such meeting in the usual way to preside over the same, shall cause order to be kept at such meetings, and for that purpose may, by oral direction or otherwise, cause any person who attempts to interrupt or disturb such meeting, to be removed to such a distance from the same as may effectually prevent such interruption or disturbance; and, by an instrument in writing under his hand, on his own view, may adjudge any person who so attempts to interrupt or disturb such meeting, guilty of such attempted interruption or disturbance;

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upon which conviction any Justice of the Peace may by warrant under his hand forthwith commit such person to the common gaol of the County or District, or to any other place of temporary confinement that such Justice may appoint, for any period not exceeding forty-eight hours from the time of commitment signed, and until the lawful costs of the constable and gaoler for the arrest, transmission and detention of such person be paid or satisfied. 7 Vic. cap. 7, sec. 11.

To call on Justices of the Peace for assistance.

12. For the purpose of keeping the peace and preserving good order to every such public meeting, the person required or appointed to preside at any such meeting as aforesaid, may command the assistance of all Justices of the Peace, Constables and other persons, to aid and assist him in so doing. 7 Vic. cap. 7, sec. 12.

Justices to swear in Special Constables on requisition of Chairman.

13. Any Justice of the Peace. present at any such meeting, upon the written application of the person so required or appointed to preside at the same, shall swear in such a number of Special Constables as such Justice may deem necessary for the preservation of the public peace at such meeting. 7 Vic. cap. 7, sec. 13.

Persons of certain ages refusing to be sworn in guilty of misdemeanor.

14. If any person between the ages of eighteen and sixty, upon being required to be sworn in as a Special Constable, by any Justice of the Peace, upon any such occasion, omits or refuses to be sworn, unless for some cause to be allowed by such Justice at the time, such person shall be guilty of a misdemeanor, and such Justice may thereupon record the refusal of such person so to be sworn, and adjudge him to pay a fine of not more than eight dollars, which fine shall be levied and made by the like process as other fines imposed by summary proceedings before Justices of the Peace, or such person may be proceeded against by indictment or information, as in other cases of misdemeanor. 7 Vic. cap. 7, sec. 14.

Justices of the Peace may disarm persons.

15. Any Justice of the Peace, within whose jurisdiction any such meeting is appointed to be holden, may demand, have and take of and from any person attending such meeting, or on his way to attend the same, any offensive weapon, such as fire-arms, swords, staves, bludgeons, or the like, with which any such person is so armed, or which any such person has in his hands or possession; and every such person who, upon such demand, declines or refuses to deliver up, peaceably and quietly, to such Justice of the Peace, any such offensive weapon as aforesaid, shall be deemed guilty of a misdemeanor; and such Justice may thereupon record the refusal of such

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person to deliver up such weapon, and adjudge him to pay a fine of not more than eight dollars, which fine shall be levied and made by the like process as other fines imposed by summary proceedings before Justices of the Peace; or such person may be proceeded against by indictment or information, as in other cases of misdemeanor: but such conviction shall not interfere with the power of such Justice or any other Justice to take such weapon, or cause the same to be taken from such person without his consent and against his will, by such force as may be necessary for that purpose. 7 Vic. cap. 7, sec. 15.

Weapons to be returned to parties in certain cases.

16. Upon reasonable request to any Justice of the Peace, to whom any such weapon has been peaceably and quietly delivered as aforesaid, made on the day next after the meeting has finally dispersed, and not before, such weapon shall, if of the value of one dollar or upwards, be returned by such Justice of the Peace to the person from whom the same was received. 7 Vic. cap. 7, sec. 16.

If accidentally lost, &c.

17. No such Justice of the Peace shall be held liable to return any such weapon, or make good the value thereof, in case the same, by unavoidable accident, has been actually destroyed or lost out of the possession of such Justice without his wilful default. 7 Vic. cap. 7, sec. 17.

Persons guilty of battery within two miles of the meeting to be punished by certain penalties.

18. Any person convicted of a battery, committed within the distance of two miles of the place appointed for the holding of such public meeting, and during any part of the day whereon any such meeting has been appointed to be held, shall be punishable by a fine of not more than one hundred dollars, and imprisonment for not more than three months, or either, in the discretion of the Court whose duty it may be to pass the sentence of the law upon such person. 7 Vic. cap. 7, sec. 17.

No one to approach armed within two miles of meeting.

19. Except the High Sheriff, under-Sheriff, and Justices of the Peace for the District or County, or the Mayor and High Bailiff, and Justices of the Peace for the City or Town respectively, in which any such meeting is to be held, and the Constables and Special Constables employed by them or any of them, for the preservation of the public peace at such meeting, no person shall, during any part of the day upon which such meeting is appointed to be held, come within two miles of the place appointed for such meeting, armed with any offensive weapon of any kind, as fire-arms, swords, staves, bludgeons, or the like; and any person who offends against the provisions in this section contained, shall be guilty of a misdemeanor, punishable by fine not exceeding one hundred

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dollars, and imprisonment not exceeding three months, or both, at the discretion of the Court whose duty it may be to pass the sentence of the law upon such person. 7 Vic. cap. 7, sec. 18.

20. Any person who lies in wait for any person returning or expected to return from any such public meeting, with intent to commit an assault upon such person, or with intent, by abusive language, opprobrious epithets, or other offensive demeanor, directed to, at or against such person, to provoke such person or those who may accompany him to a breach of the peace, shall be guilty of a misdemeanor, punishable by fine not exceeding two hundred dollars, and imprisonment not exceeding six months, or both, at the discretion of the Court. 7 Vic. cap. 7, sec. 19. Persons guilty of lying in wait how to be punished.

21. Every action to be brought against any person for any thing by him done under authority of this Act, must be brought within twelve months next after the cause of such action accrued. 7 Vic. cap. 7, sec. 20. Actions to be brought within 12 months.

CON. STAT. CAN.—CHAPTER LXXXIII.

AN ACT RESPECTING THE CONSOLIDATED MUNICIPAL LOAN FUND.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. The sections of this Act numbered two to eighty-six, are to be construed and take effect subject to the provisions contained in the sections following the eighty-sixth, numbered eighty-seven to one hundred and eight. 22 Vic. c. 15 (1859). The first 86 sections to be controlled by the subsequent sections.

2. Whereas by the Act passed in the sixteeth year of Her Majesty's reign, chapter twenty-two, intituled, *An Act to establish a Consolidated Municipal Loan Fund for Upper Canada*, and by certain subsequent Acts extending the same, there was established a Consolidated Municipal Loan Fund for each section of the Province of Canada, not at any time to exceed the sum of One Million Five Hundred Thousand Pounds sterling, for either of the said sections, together with such further sum or sums of money as may constitute the Sinking Fund under the authority of this Act or any former Act: Municipal Loan Funds established.

Therefore the said funds shall continue to be called respectively, The Lower Canada Municipal Loan Fund, and The Called the L. C. and U. C. loan fund.

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Continued. Upper Canada Municipal Loan Fund, and shall be managed by the Receiver-General, under the direction of the Governor-in-Council, in the manner provided by this Act, in separate accounts for each, and the books and accounts thereof shall be kept in his office. 18 Vic. cap. 13, secs. 1, 2; 16 Vic. cap. 22, sec. 1.

Debentures to issue on the credit thereof.

3 All Debentures issued by the Receiver-General, under the provisions of this Act, shall be issued upon the credit of the said Consolidated Municipal Loan Fund of Lower Canada or of Upper Canada, as the case may be. 18 Vic. cap. 13, sec. 3.

Municipalities may raise money on the credit of this fund.

4. The Council of any County, City, incorporated Town, Township or Village, may, if not already done, authorize by by-law any sum of money, not exceeding in the whole, including sums already raised, twenty per cent. on the aggregate valuation of the property in the Municipality according to the then last finally revised Assessment roll thereof and affected by the by-law, to be raised on the credit of the said Fund available to such Council, and may appropriate such sum, or so much thereof as may be found requisite, to defray the expense of building or improving any Gaol or Court House for the use of such Municipality, or for acquiring, constructing or completing, or assisting in the construction or completion of any railroad, canal or harbour, or for the improvement of any navigable river, within or without the Municipality, the acquisition or construction whereof will benefit the inhabitants of such County, City, Town, Township or Village. 16 Vic. cap. 22, sec. 2; 16 Vic. cap. 123, sec. 7; 18 Vic. cap. 13, sec. 2.

For certain purposes.

And other objects in cities, &c.

5 The Council of any incorporated City, Town or Village may, by by-law, authorize any sum of money, not exceeding twenty per cent. as aforesaid, to be raised on the credit of the said Fund, available as aforesaid, and appropriate the same, or so much thereof as may be necessary, to defray or aid in defraying the expense of erecting, prosecuting and maintaining any Gas or Water Works within or for the use of such City, Town or Village, or its salubrity, drainage or more perfect sanitary condition, or for constructing or aiding in the construction of any plank or macadamized road for the benefit of any such City, Town or Village. 18 Vic. cap. 13, sec. 4; 16 Vic. cap. 22, sec. 2.

And for additional objects.

6. The Council of any City or County may, by By-law, authorize any sum of money, not exceeding twenty per cent. as aforesaid, to be raised on the credit of the said Fund, avail-

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able as aforesaid, and appropriate such sum, or so much thereof as may be necessary, to defray the cost of making or improving any bridge, macadamised, gravel or planked road, within or without the Municipality, the making or improving whereof will benefit the inhabitants of such County or City. 16 Vic. cap. 22, sec. 2; 18 Vic. cap. 18, sec. 4; see 16 Vic. cap. 123, sec. 7.

Additional powers in L. C.

7. The Council of any Municipality in Lower Canada may, in addition to the powers above granted, raise upon the credit of the share of the said Fund set apart for Lower Canada any sum of money which they deem necessary for the opening, establishing, constructing, repairing or improving, either within or without the limits of the Municipality, of any road street or bridge, the construction and maintenance of which will be advantageous to such Municipality; and appropriations out of the said Fund which, prior to the tenth day of June, one thousand eight hundred and fifty-seven, had been made by Municipal Corporations in Lower Canada, for the purposes aforesaid, are hereby approved and confirmed. 20 Vic. cap. 42, secs. 2, 3.

What By-laws are to express.

8. Every By-law above mentioned shall declare the purpose to which the sum to be raised shall be applied, and make such other provisions as may be requisite for ensuring the due application of the money, and the attainment of the objects contemplated by the By-law. 16 Vic. cap. 22, sec. 2.

What By-laws may provide.

9. Any such By-law may provide that the assistance of the Municipality shall be granted towards any of the purposes aforesaid, specifying the same, either by subscribing on behalf of the Municipality for stock in any Company incorporated for any such purposes, or by loaning money to such Company, or to any Board of Commissioners incorporated for any of the above purposes, in which case the security to be taken from the Company or Board of Commissioners, and the other terms of the loan, shall be mentioned in the By-law. 16 Vic. cap. 22, sec. 2, sub-sec. 1.

Recital, &c.

10. The By law shall recite that the loan is to be raised under the provisions of this Act, and shall express the term for which the loan is required, which shall not in any case exceed thirty years, nor be less than five years. 16 Vic. cap. 22, sec. 2, sub-sec. 2.

11. If the By-law has been passed by a County Council, the principal and interest of the loan shall be payable by all the

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If By-law passed by a County Council.

Townships, Towns and Villages in the County, and the County Treasurer shall in each year apportion the amount to be paid by each, according to the amount of property returned upon the Assessment Rolls of such Townships, Towns and Villages respectively, for the financial year next preceding that for which the apportionment is to be made. 16 Vic. cap. 22, sec. 2, sub-sec. 3.

Publication of By-law before passing.

12. Such By-law, or every material provision thereof, shall for at least one month before the final passing thereof, be published for the information of the rate-payers in some newspaper published weekly or oftener, within the territorial jurisdiction of the Municipality, or if there be no such newspaper, then in some newspaper published in the place nearest to such jurisdiction, and also by posting the same up in at least four public places in the Municipality (and if it be a By-law of a County Council, then in each Municipality in such County), with a notice signed by the Clerk of the Municipality in the Council of which the By-law originated, specifying in such notice the date of the first publication of the By-law, and signifying that it is a true copy of a By-law which will be taken into consideration by the Council of the Municipality after the expiration of one month from the first publication thereof in such newspaper, and that on some day and at some hour and place, (or if the meeting be for a County by-law, places,) named in the notice, and which shall be previously fixed by the said Council, such day not being less than three weeks, nor more than four weeks after such first publication, a general meeting of the qualified Municipal electors of the Municipality, (or of the several Municipalities within the County,) will be held for the purpose of considering such by-law, and approving or disapproving of the same. 16 Vic. cap. 22, sec. 2, sub-sec. 4.

To be sanctioned by the electors.

13. On the day and at the hour and place (or places) appointed by such notice, the qualified Municipal electors, or such of them as choose to attend the meeting, shall take the said by-law into consideration, and shall approve or disapprove of the same. 16 Vic. cap. 22, sec. 2, sub-sec. 5.

Who to preside at the meeting of electors.

14. At such meeting the Mayor or Reeve of the Municipality in which it is held shall preside, or in his absence some other member of the Council of such Municipality to be chosen by the meeting. 16 Vic. cap. 22, sec. 2, sub-sec. 5.

The Clerk to produce rolls

15. The Clerk of such Municipality shall have with him the Assessment Rolls of the Municipality then in force, or

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certified copies thereof, and shall act as Secretary; and the only question to be determined at such meeting, shall be whether the majority of the Municipal electors present thereat, do or do not, appprove of the by-law. 16 Vic. cap. 22, sec. 2 sub-sec. 5.

Putting the question.

16. When the question has been put, the person presiding shall declare whether in his opinion the majority is for the approval or disapproval of the by-law, and his decision if not forthwith appealed from, shall be final, and shall forthwith be communicated to the Council or the Municipality which originated the by-law, by a certificate under the hand of the Secretary of the meeting. 16 Vic. cap. 22, sec. 2, sub-sec. 5.

Demand of Poll.

17. Any six duly qualified Municipal electors present at any such meeting may appeal from the decision of the person presiding, and demand a poll, and such poll shall be granted by the person presiding at the meeting, and shall be immediately taken by him, the Clerk of the Municipality acting as poll Clerk. 16 Vic. cap. 22, sec. 2, sub-sec. 6.

Polling votes

18. Each elector shall then present himself in turn to the person presiding, and shall give his vote "yea" or "nay,"—the word "yea," meaning that he approves the proposed By-law, and the word "nay" that he disapproves the same;—but no person's vote shall be received unless he appears by the Assessment Rolls to be a duly qualified Municipal elector. 16 Vic. cap. 22, sec. 2, sub-sec. 6.

Adjournment of Poll

19. The person presiding may, if necessary, adjourn the poll at sunset on the day of meeting, until ten o'clock in the forenoon of the following day, not being a Sunday or statutory holiday, when the poll shall be continued as on the first day, but shall be closed at sunset of such second day. 16 Vic. cap. 22, sub-sec. 7.

Closing the Poll.

20. If at any time on the first or second day one half hour elapses without a vote being offered, the poll shall be closed. 16 Vic. cap. 22, sub-sec. 7.

Result to be declared.

21. At the close of the poll the person presiding shall count the "yeas" and the "nays," and ascertain and certify for the information of the Council which originated the by-law whether the majority is for the approval or disapproval of the said by-law; and such certificate shall be countersigned by the Clerk of the Municipality acting as Secretary of the meeting, and kept by him, with the poll list, among the records of his office, and if the by-law originated with a County Council, a

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duplicate thereof shall be transmitted to the County Clerk. 16 Vic. cap. 22, sub-sec. 8.

When votes taken upon County By-laws.

22. If the by-law to be considered is a by-law of a County Council, the meeting to consider the same, or the poll of the electors, shall not be held for the whole County at one place, but such meeting or poll shall be held in each of the several Municipalities of such County respectively.

By what majority By-law to be approved or disapproved.

23. The question whether the by-law is approved or disapproved, shall be decided either by a majority of the total number of electors voting "yea" or "nay," in the whole County, or by the majority of votes of Municipalities approving or disapproving of the same, giving to each Municipality one or two votes according as it is by law authorized to return a Reeve or a Reeve and Deputy Reeve to the County Council of such County.

Majority of votes of electors to decide.

24. In the last mentioned case each Municipality shall be held to have voted for the approval of the by-law, if the majority of electors who voted at the meeting held therein have voted "yea," and to have voted for the disapproval thereof if the majority of such electors have voted "nay."

The mode of decision to be determined by By-law.

25. Each such County Council shall make a by-law to provide which of the two modes of decision shall be adopted, and shall also thereby declare the manner in which the decision of each Municipality, or of the electors thereof, shall be made known to the County Clerk 16 Vic. cap. 22, sec. 2. sub-sec. 9.

If By-law disapproved.

26. If the By-law be disapproved by the majority of the electors, or of the Municipalities, as aforesaid, the Council shall not proceed to pass the same; but if it be approved by such majority, and afterwards passed by the Council, then such By-law and all the provisions thereof shall be subject to the approval of the Governor-in-Council, and shall have no force until such approval has been given, but shall not be

If approved.

subject to the special provisions made by the Act respecting Municipal Institutions in Upper Canada, concerning By-laws creating debts, or to any provisions or formalities, except those prescribed by such Act with regard to By-laws generally, and those prescribed by this Act. 16 Vic. cap. 22, sec. 2, sub-s. 10.

Contents of By-laws submitted for Governor's approval.

27. Every such By-law, when submitted to the Governor-in-Council for his approval, shall contain a recital that it has been approved by a majority of the duly qualified Municipal electors (or of the Municipalities) of (or in) the Municipality, at

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a meeting (or meetings) called and held in conformity to the requirements of this Act. 16 Vic. cap. 22, sec. 2, sub-sec. 10.

Recital to be conclusive.

28. Such recital shall, for all the purposes of this Act, be conclusive proof of the facts therein stated. 16 Vic. cap. 22, sec. 2, sub-sec. 10.

Erroneous recital not to vitiate.

29. No such By-law, or anything done under it, shall be invalidated by any error of fact or incorrectness in such recital; but this provision shall not affect the responsibility of those who have wilfully concurred in any misstatement of fact in such recital. 16 Vic. cap. 22, sec. 2, sub-sec. 10.

What proof the Governor to require.

30. The Governor-in-Council shall not approve of such By-law until proof has been made to his satisfaction that the By-law was published and notice given, as hereinbefore required.

Who to furnish the proof—and how.

31. The Treasurer of the Municipality shall furnish the Governor with a statement, certified under oath, showing the amount of taxable property in the Municipality according to the then last Assessment Roll or Rolls, and a true account of all the debts and liabilities of the Municipality, and of its expenditure for every purpose, for the then last year. 16 Vic. cap. 22, sec. 2, sub-sec. 11.

Governor may call for documents, &c.

32. The Governor-in-Council may require from the Municipality by the Council whereof any such By-law has been passed, all such documents and information as he thinks necessary for ascertaining the expediency or inexpediency of such By-law, or any of the provisions thereof, and the proper officers of such Municipality shall furnish the same accordingly.

How By-laws may be repealed or amended.

33. No such By-law shall be repealed, amended or altered, otherwise than by another By-law approved in like manner by the Governor-in-Council, and to which all the provisions of this Act shall apply, in like manner, as to the original by-law. 16 Vic. cap. 22, sec. 3.

When approved, Receiver-General may raise by loan &c. under debentures.

34. So soon as the by-law has been approved as aforesaid, the Receiver-General may raise by loan, under Debentures issued by him upon the credit of the proper Consolidated Municipal Loan Fund, a sum of money not exceeding the sum authorized by such by-law, and pay the same over to the Treasurer of the Municipality, or deliver to him, or to his order, Debentures secured upon the said Fund to a like amount, or pay part of such sum in money to the Treasurer, and deliver to him Debentures for part.

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And enter to debit of the Municipality

35. In every case he shall enter the amount for which Debentures are issued and delivered, to the Debit of the Municipality as so much due by it to the said Fund. 16 Vic. cap. 22, sec. 3, sub-sec. 1.

Where debentures to be payable and in what currency.

36. The principal and interest of the Debentures so issued may be made payable at any place within or without this Province in currency or in sterling money or in the currency of the place where they are made payable.

In what form debentures to be.

37. Such Debentures shall be in such form as the Governor-in-Council directs, subject to the following provisions. 16 Vic. cap. 22, sec. 3, sub-sec. 2.

1. They shall express upon their face that the Provincial Government undertakes to pay the principal sum mentioned in them and the interest thereon, out of the moneys forming part of the Consolidated Municipal Loan Fund, and out of no other moneys or funds whatsoever. 16 Vic. cap. 22, sec. 3, sub-sec. 3.

2. The principal shall be made payable at the time provided by the by-law, and the Debentures shall contain no provisions inconsistent with the by-law by which the loan is authorized, and they shall contain all such provisions as may be necessary to carry out the intentions of such by-law. 16 Vic. cap. 22, sec. 3, sub-sec. 4.

3. The rate of interest upon them shall in no case exceed six per centum per annum, and such interest shall be made payable half yearly on days in each year to be therein appointed for the purpose; but if any Debenture be issued within the three months next before any such day, then the first interest thereon may be made payable on that one of the half yearly days which comes next after the expiration of three months from the date of its issue. 16 Vic. cap. 22, sec. 3, sub-sec. 5.

4. They shall be for even sums of money, and no Debenture shall be for a less sum than one hundred dollars, or the equivalent thereof. 16 Vic. cap. 22, sec. 3, sub-sec. 6.

5. They shall contain such conditions as the Governor from time to time, by order in Council, directs as to the right of the Receiver-General to call in such Debentures or any of them for payment before the time therein absolutely appointed for the payment of the principal, the manner in which they may be so called in, and in which it is to be determined which of such Debentures shall be so called in at any time, if they be not all called in at the same time.

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6. No interest shall be payable upon any Debenture which has been called in according to such conditions, for any period after the day on which it has been required to be presented for payment, which day shall always be one of those on which interest is payable on such Debentures; and this forfeiture of interest in the case last mentioned shall be expressed on the face of the Debenture. 16 Vic. cap. 22, sec. 3, sub-sec. 7.

What it is not necessary to show

The number to be shewn.

38. It shall not be necessary that any Debenture should show upon what by-law or with reference to what Municipality it is issued, but each Debenture shall be distinguished by a number, by which it shall be known and referred to. 16 Vic. cap. 22, sec. 3, sub-sec. 8.

Debentures may be exchanged.

39. The Governor-in-Council may direct that any such Debentures may, on the application of the holders thereof, be exchanged for another or others of the same amount of principal, payable absolutely at the same or any later date, and bearing the same or any less rate of interest. 16 Vic. cap. 22, sec. 3, sub-sec. 9.

To be within the Acts respecting freedom of banking, and duty on bank notes.

40. The said Debentures shall be held to be Debentures issued by the Government of this Province through the Receiver-General thereof, within the meaning of the Act respecting Banks and Freedom of Banking, and of the Act respecting the Duty on Bank Notes, and shall be available accordingly for all the purposes of the said Acts or either of them. 16 Vic. cap. 22, sec. 3, sub-sec. 10.

Any moneys may be invested in such debentures.

41. Any moneys which are by law directed to be invested by or under the directions of the Governor-in-Council, may be invested in such Debentures. 16 Vic. cap. 22, sec. 3, sub-sec. 10.

In U. C. the building fund may be applied in aid of the Municipal Loan Fund.

42. When, so far as relates to Upper Canada, it is necessary to enable the said Upper Canada Municipal Loan Fund to meet the charges upon it, the Governor-in-Council may from time to time direct the Receiver-General to advance to the said Fund, out of any unappropriated moneys forming part of the Fund arising out of moneys levied under the authority of the Consolidated Statute for Upper Canada respecting the Building Fund, the Lunatic Asylum and other buildings, and known as "The Upper Canada Building Fund," such sum as may be deemed expedient, and in like manner direct the repayment of such sum from the said Municipal Loan Fund to the said Building Fund. 16 Vic. cap. 22, sec. 4; 18 Vic. cap. 13, sec. 1.

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What accounts to be kept.

43. The Receiver-General and the Treasurer of the Municipality shall respectively keep a correct account between the Municipality and the Consolidated Municipal Loan Fund, debiting the Municipality with the principal of each Debenture issued for its purposes, and with the interest thereon as the same becomes due, and any other expenses or liabilities incurred by reason of such Debentures, and crediting it with the sums paid over to the Receiver-General to meet such principal and interest, also with the proportionate share of the Municipality in the proceeds of any moneys forming part of the Sinking Fund, and invested by the Receiver-General, and with any other sums received by him on account of the Municipality. 16 Vic. cap. 22, sec. 5.

What notice the Receiver General to give.

44. The Receiver-General shall, three months before each day in each year in which interest or principal will be payable on the Debentures issued for the purposes of any Municipality, notify the Treasurer thereof, by letter sent by post, of the sum which he will, under the provisions of this Act, be required to pay over to the Receiver-General by reason of such Debentures, which sum such Treasurer shall pay over accordingly. 16 Vic. cap. 22, sec. 5.

Want of notice not to affect, &c.

45. The failure on the part of the Receiver-General to give such notice shall not affect the obligation of the Treasurer or of the Municipality, to pay over such sum at the time when it ought to be so paid over. 16 Vic. cap. 22, sec. 5.

Eight per cent. to be paid yearly.

46. The sum to be so paid at any time by the Treasurer for his Municipality shall be at the rate of eight per centum per annum on the amount of the Debentures issued for the Loan in respect of which the payment is made, for the period to which the payment relates, and such further sum as may be payable on the day in question for or on account of the principal of such Debentures, less the sum applicable to the payment of such principal as may then stand at the credit of the Municipality in account with the said Fund; and such payments shall continue to be made until all the Debentures are paid off in principal and interest, or until there be a sufficient sum at the credit of the Municipality to pay off the same. 16 Vic. cap. 22, sec. 5, sub-sec. 1.

When coupons receivable as money.

47. If the Treasurer has any of such Debentures in his hands as the property of his Municipality, then the proper Coupons for interest on such Debentures may be taken from him by the Receiver-General as money. 16 Vic. cap. 22, sec. 5, sub-sec. 2.

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Sinking Fund.

48. The difference between the said rate of eight per cent. and the actual interest payable on the Debentures, and all other moneys which come into the hands of the Receiver-General as part of the said Fund, and are not required to pay the interest of Debentures chargeable upon it, shall form a Sinking Fund, and shall be from time to time invested by the Receiver-General, under the direction of the Governor-in-Council, and the amount thereof shall, with the proceeds of such investment (which shall also form part of the said Sinking Fund), be applied under such direction to the redemption of Debentures issued on the credit of the said Municipal Loan Fund. 16 Vic. cap. 22, sec. 5, sub-sec. 3.

How Sinking Fund to be credited to Municipalities.

49. Each Municipality shall be credited with a share of the said Sinking Fund equal to the amount of the sums it has paid into the same, and with a share of the proceeds of any part of the said Fund invested by the Receiver-General proportionate to the sums it has paid into the same, and the time during which such sums have remained in the said Sinking Fund; and such share shall be accordingly applied to the redemption of the Debentures issued for the purposes of such Municipality. 16 Vic. cap. 22, sec. 5, sub-sec. 3.

How debited

50 Each Municipality shall be debited with all sums paid out of the said Sinking Fund on its account. 16 Vic. cap. 22, sec. 5, sub-sec. 3.

When applicable to payment of interest.

51. The Receiver-General may pay the interest on any Debenture, out of the said Sinking Fund, if in any case the other moneys at his disposal for the purpose be insufficient, repaying to the Sinking Fund, the amount so paid with interest, out of the moneys which would otherwise be applicable to the payment of such interest so soon as the same come into his hands. 16 Vic. cap. 22, sec. 5, sub-sec. 4.

Receiver-General may dispose of securities.

52. The Receiver-General may from time to time sell, pledge or otherwise dispose of any securities in which any part of the Sinking Fund may have been invested in case it is necessary so to do in order to enable him to pay any sum hereby made payable out of the Sinking Fund. 16 Vic. cap. 22, sec. 5, sub-sec. 5.

Treasurer's duty as to yearly rate.

53. Whenever a by-law authorizing the raising of money by loan, under this Act, has been passed by the Council of any Municipality, and approved by the Governor-in-Council, the Treasurer of such Municipality shall *ipso facto*, without any other authority or direction before the making out of the

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ordinary Collectors' Rolls in each year, if the by-law is then in force, and if not, then at least three months before the earliest day on which interest can be payable on any Debenture issued under such by-law, ascertain the highest sum which can be required during the year, to pay the interest (and the principal if any be payable,) on or of Debentures issued or to be issued under such by-law, and shall add five per centum thereunto for losses and expenses, and shall certify the amount in a notice to the Clerk of the Municipality, or if such Municipality be a County, then to the Clerk of each Township or incorporated Town or Village therein, the portion payable by the same. 16 Vic. cap. 22, sec. 6.

How apportioned.

54. The Clerk shall assess the amount so certified equally upon all the taxable property in his Municipality, and set down on the ordinary Collectors' Rolls for the year, if it has not been previously delivered to the Collectors, the amount with which each party or lot is chargeable, under the head of "Loan Rate for —— (*naming the purpose*)" or "County Loan Rate for —— (*naming the purpose,*)" as the case may be. 16 Vic. cap. 22, sec. 6.

Clerk's duties.

55. If such amount be so certified to the Clerk after the time in any year when the Collectors' Rolls have been delivered to the Collectors, then such Clerk shall forthwith make out Special Collectors' Rolls for the purpose in the form prescribed for ordinary Collectors' Rolls, so far as such form may be applicable, and shall deliver the same to the Collector. 16 Vic. cap. 22, sec. 6.

If any funds in Treasurer's hands.

56. If there be in the hands of the Treasurer at the time of his giving such notice to the Clerk of the Municipality, any moneys applicable to the payment of the principal or interest of the Debentures to which such notice refers, the Treasurer may deduct such sum from that to which the notice refers before adding the five per cent thereto. 16 Vic. cap. 22, sec. 6.

If profits accrue from the use of the moneys, &c.

57. If the purpose for which the loan is raised be such as to produce profit or to yield returns in money to the Municipality, or if the money be loaned by it so as to produce interest or if the capital be reimbursable to the Municipality, then the Treasurer and the Mayor, or Head of such Municipality may enter upon the books of the Corporation, a certificate signed by them in the following form:

Municipality of the Township of ——

We Certify to all whom it may concern, that out of the Loan, raised under the By-law, No. —, intituled, "(*Title of*

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By-law,)" on the credit of the Consolidated Municipal Loan Fund, there has been invested the sum of —— in shares of the stock of the *Bytown and Prescott Railroad Company (or as the case may be)*, that this Municipality now holds the said shares; that there ought to be paid dividends thereon during the present year, and that we have reason to believe and do believe that there will be paid into the hands of the Treasurer, as and for such dividends, before the thirty-first day of December now next, the sum of ——, which sum, we think, ought therefore, under the provisions of the Act intituled *(title and date of this Act)*, to be deducted from the sum which ought otherwise now to be raised on the taxable property in this Municipality, in order to enable the Treasurer to meet the payments which he is to make to the Receiver-General during the present year, on account of the said loan.

Witness our hands this —— day of ——, 18—.

Signatures, A. B., Treasurer.
C. D., Mayor.

And the Treasurer may then deduct the sum mentioned in such certificate from that to which the notice refers, before adding the five per cent. as aforesaid, or if the sum mentioned in the certificate be as great or greater than that to which the notice would refer, then no notice shall at that time be given to the Clerk or Clerks of the Municipality or Municipalities concerned. 16 Vic. cap. 22, sec. 6.

58. If the net sum raised by any such rate as last aforesaid be greater than that required to enable the Treasurer to pay the Receiver-General, the surplus shall remain in the hands of the Treasurer and be applicable to payments to be made to the Receiver-General for the next ensuing year, on account of the same loan. 16 Vic. cap. 22, sec. 6, sub-sec. 1. If amount raised exceeds, how surplus to be disposed of.

59. If the net sum raised be insufficient to enable the Treasurer to pay the required sum to the Receiver-General, a new assessment shall be made as hereinafter provided in cases of deficiency. 16 Vic. cap. 22, sec. 6, sub-sec. 1. If insufficient.

60. All sums of money coming to the Municipality as the profits, dividends or returns from any work for which the loan has been authorized, or as interest or principal of any sum lent by the Municipality out of such loan, or otherwise howsoever by reason of such loan, shall be paid into the hands of the Treasurer and be by him carefully kept apart from all other moneys, and paid over from time to time to the Receiver- Integrity of funds received from any source.

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General, to be by him placed to the credit of the Municipality with the Consolidated Municipal Loan Fund, except in so far as it is otherwise especially provided in the By-law authorizing such loan. 16 Vic. cap. 22, sec. 6, sub-sec. 2.

When additional rate may be imposed.

61. If the sum, or any part of the sum, which ought under this Act to be paid over at any time by the Treasurer of any Municipality to the Receiver-General, is not so paid over, and if the Treasurer has not money in his hands applicable to the same, or if the Treasurer foresees that he will not have the means of paying over such sum or part thereof to the Receiver-General at the time when it ought to be so paid over, then in either case such Treasurer shall forthwith add five per centum to the sum wanting for such purpose, and certify the same to the Clerk of his Municipality, or if such Municipality be a County, then he shall certify to the Clerk of each Township or incorporated Town or Village therein, the amount payable by the same, and each Clerk receiving such notice shall forthwith make out a Special Collector's Roll for the amount so certified to him, and deliver the same to the Collectors. 16 Vic. cap. 22, sec. 6, sub-sec. 3.

Interest on arrears.

62. If any sum payable at any time by any Treasurer to the Receiver-General, be not paid at such time, the Receiver-General shall charge interest on such sum for the time it remains unpaid, against the Municipality in account with the Consolidated Municipal Loan Fund, and deducted from the share of such Municipality in the Sinking Fund. 16 Vic. cap. 22, sec. 6, sub-sec. 4.

Duties and liability of collectors and sureties.

63. The sums entered in any Collector's Roll by any Clerk of a Municipality shall be collected and levied, and payment thereof secured and enforced in like manner and under the same provisions as other Municipal taxes, but the net proceeds thereof shall be applied by the Treasurer solely to the purpose for which they are directed to be raised. 16 Vic. cap. 22, sec. 6, sub-sec. 5.

What Treasurer to certify if funds deficient.

64. The Treasurer of any Municipality in arrear for any sum of money under this Act or under any Consolidated Municipal Loan Fund Act heretofore passed, shall, within one month after the time when such sum of money becomes payable, certify to the Secretary of the Province the total value of the assessable property, and the rate in the dollar in such Municipality for the year next preceding such default. 20 Vic. cap. 20, sec. 1, *latter part.*

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65. In case the Receiver-General certifies to the Governor that any Municipality is in default for any sum of money which ought to be paid by the Treasurer thereof, to the Receiver-General, the Governor may if he sees fit, at any time after the expiration of three months from such default, issue his warrant to the Sheriff, directing him to levy a rate of not less than twelve and a half cents in the dollar on the yearly value of the assessable property in the Municipality, or a proportionate rate on the actual value of such property, reckoning the yearly value at six per cent on its actual value. 20 Vic. cap. 20, sec. 1; 16 Vic. cap. 22, sec. 7.

What the Receiver-General to certify to the Governor, &c.

66. In cases in which the proceeds of such rate would, in the opinion of the Governor, exceed the amount for which such Municipality is in default and the costs of the levy, the Governor may direct such less rate to be levied as will, in his opinion, produce an amount fully sufficient to pay the sum for which the Municipality is in default and the costs of the levy, and the surplus (if any) shall be returned to the Municipality according to law. 20 Vic. cap. 20, sec. 1.

When he may direct a less rate to be levied.

67. The Sheriff shall obey the said warrant, and levy the sums therein mentioned, in like manner and within the same period as he would levy the same if it had been recovered against the Municipality under a judgment of the proper Court of law, and a writ of execution had issued thereupon directed to him and commanding him to levy the same by rate, and shall pay over the net proceeds to the Receiver-General, and the costs allowed to the said Sheriff for executing the said warrant shall be the same as those to which he would be entitled for executing a writ of execution for a like sum. 16 Vic. cap. 22, sec. 7.

Sheriff's duties.

68. In case the Receiver-General certifies to the Governor that any Municipality is in default, the Governor may also issue his warrant to the Sheriff, directing him to seize all goods and chattels, lands and tenements, and other property or things liable to be seized in execution, belonging to such Municipality, and to sell the same, or so much thereof as may be necessary to produce the amount for which such Municipality is in default, and costs, as he would under execution against such Municipality, and to pay the proceeds unto the Receiver-General in liquidation of such amount; but no School House, Alms House, Fire Engine or Fire Hoses or Engine House, Court House or Gaol, or property required for the administration of justice, shall be seized or sold under such warrant. 20 Vic. cap. 20, sec. 2.

When the Governor may issue a warrant against the effects of a Municipality

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The separation of united counties provided for.

69. In the case of a loan effected on the credit of the said Consolidated Municipal Loan Fund by any union of two or more Counties then united for municipal purposes, but which separate before such loan has been paid, and such Counties upon such separation agree in the manner provided by law, as to the part which each or any of them shall bear in the liability arising out of such loan, then such agreement shall be the rule by which the Receiver-General shall be guided in ascertaining the liability of each of such Counties, and the amount to be paid by or levied upon each of them in respect of such loan, in case of any default to pay any sum which ought to be paid to the Receiver-General in respect of the same; and any County having paid its share of such liability so ascertained, shall not be liable in respect of the share thereof of the other County or Counties united with it when the loan was effected. 20 Vic. cap. 20, sec. 3.

When share of Clergy fund may be withheld.

70 The Governor may direct the Receiver-General to withhold the share of the Clergy Municipalities Fund accruing or which may accrue to any Municipality certified by the Receiver General to be in default, or from the several Municipalities in any County while such County is so certified to be in default, and to carry such share or shares to the credit of such Municipality or County on account of such default. 20 Vic. cap. 20, sec. 4.

Restrictions as to future loans.

71. After any Municipality has borrowed any money under this Act or any Consolidated Municipal Loan Fund Act, heretofore passed, it shall not contract any further debt without the consent and approval of the Governor-in-Council, until all debts contracted by it under this Act or any such Consolidated Municipal Loan Fund Act have been wholly paid off. 16 Vic. cap. 22, sec. 8.

This Act to extend to By-laws in U. C. passed before 10th November, 1852, or in course of passing on 23rd May, 1853.

72. This Act and all the provisions hereof shall extend and apply to any loan authorized by any by-law of any Municipality in Upper Canada, passed on or before the tenth day of November, one thousand eight hundred and fifty-two, or which, on such last mentioned day, was in course of being passed and was passed on or before the twenty-third day of May, one thousand eight hundred and fifty-three, for the purpose of aiding in the construction of any Railway for the making of which a company was incorporated before the tenth day of November, one thousand eight hundred and fifty-two, or incorporated under any Act passed during the Session of the Parliament of Canada, held in the sixteenth year of Her Majesty's Reign,

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whether such assistance was given by taking Stock in such Company or by loaning money to it, or for the improvement of any navigable river or other work provided for by the Act of incorporation, and also to any loan authorized by a by-law of any Municipality, passed in manner and at the time aforesaid, authorizing the raising of a loan for the purpose of erecting, repairing or improving any County building or buildings, provided such loan had not been negotiated by the Municipality under such by-law, before the tenth day of November, in the year one thousand eight hundred and fifty-two. 16 Vic. cap. 22, sec. 9; 16 Vic. cap. 123, sec. 1.

Also to By-laws in L. C. passed before the 18th December, 1854. &c.

73. This Act and all the provisions hereof, except as otherwise herein provided, shall in like manner extend and apply to any loan authorized by any by-law of any Municipality in Lower Canada, passed before the eighteenth day of December, one thousand eight hundred and fifty-four, under the provisions of any Act authorizing the same, or for the purpose of aiding in the construction of any railway for the making of which a company was, on or before the day last aforesaid, incorporated or may be incorporated under any Act passed or to be passed, whether such assistance be given by taking Stock in such company, or by loaning money to it, and also to any loan authorized by any by-law of a Municipality passed before the day last aforesaid, authorizing the raising of any loan for the purpose of erecting, repairing or improving any Municipal building. 18 Vic. cap. 13, sec. 5.

By-laws, &c., relating to secs. 72 & 73, to be laid before the Governor.

74. Before any such Municipality shall be entitled to receive any money to be raised under the authority of any By-law passed at the time or in the manner in the seventy-second and seventy-third sections of this Act mentioned, a true copy of the By-law under which the money is to be raised, together with affidavits of the Treasurer and Clerk of the Municipality verifying the same, and such other information as the Governor-in-Council requires, shall be transmitted to the Receiver-General. 16 Vic. cap. 123, sec. 2.

If the Governor approves, its effect as respects yearly rates.

75. If the Governor-in-Council approves of such By-law, it shall not be necessary to impose or levy annually the sum or rate per pound which may have been fixed in such By-law to pay the principal and interest of the loan, but such sum only shall be levied and collected as may be necessary under the provisions of the fifty-third to the sixty-third sections inclusive of this Act, and all proceedings in connection with such loan and By-law, or for the recovery of any sum of money

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which ought to be paid thereunder, may be had and taken as if the said By-law had been passed for the purpose of raising money under this Act. 16 Vic. cap. 123, sec. 3.

Certain debentures, &c., how to be disposed of.

76. All Debentures which have been or can be issued under the authority of such By-laws as are referred to in the seventy-second and seventy-third sections of this Act, shall be deposited with the Receiver-General before the Municipality shall be entitled to receive any of the money to be raised under any such By-law, or any Debenture secured upon the said fund and deliverable by him under the provisions of this Act, and upon payment by the Municipality of the whole amount payable in respect of such loan, such Debentures shall be cancelled and destroyed in such manner as the Governor-in-Council directs. 16 Vic. cap. 123, sec. 4; 18 Vic. c. 13, s. 5.

To whom moneys raised under the 72nd and 73rd sections to be paid.

77. The money raised on the Debentures issued and delivered by the Receiver-General for and upon the aforesaid Debentures issued under any by-law mentioned in the seventy-second and seventy-third sections of this Act, shall be paid or delivered by the Receiver-General only on the joint order of the Municipal Council and of the holders of such Debentures. 18 Vic. cap. 13, sec. 5, *proviso 2nd.*

Authority on which Receiver-General to pay.

78. The money raised under any by-law mentioned in the said seventy-second and seventy-third sections of this Act shall be paid by the Receiver-General only on the joint order of the Head of the Municipality and the President of the Company entitled to receive the same. 16 Vic. cap. 123, sec. 4.

The dissolution of Union of Counties provided for.

79. When any such by-law has been passed by the Council of any Union of Counties in Upper Canada, and such Union is at any time dissolved after the passing of such by-law, the several Counties of which such Union of Counties was composed, shall, except in the cases provided for in the sixty-ninth section of this Act, continue to be liable in respect of the loan raised under such by-law as fully and effectually to all intents and purposes as if such union had not been dissolved, and except as aforesaid the Sheriff of the senior County shall have power within every County which at the time of the passing of such by-law formed part of the former Unions of Counties, to levy any rate which he may be required to collect under this Act, in the same manner as if such Union of Counties had not been dissolved. 16 Vic. cap. 123, sec. 4.

Who to sign orders in such cases.

80. In case of any dissolution of a Union of Counties as aforesaid, the order hereinbefore mentioned shall be signed by

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the head of the Municipality of the senior County of such former Union. 16 Vic. cap. 123, sec. 4.

Informality in by-laws not to vitiate.

81. No informality or irregularity in any By-laws referred to in the seventy-second and seventy-third sections of this Act, or in the proceedings relative thereto anterior to the passing thereof, shall in any way affect the validity of the same after the Governor-in-Council has approved such By-law, and the order in Council approving such By-law shall be held to cover any such informality or irregularity, and the By-law shall be valid, and proceedings may be had for enforcing the payment by the Municipality (or in Lower Canada by the sub-division of the Municipality on behalf of which the By-law was passed) the Council whereof passed such By-law and by the inhabitants thereof under the provisions of this Act, as if the By-law had been passed under this Act. *Vide* 18 Vic. cap. 13, sec. 6; 16 Vic. cap. 123, sec. 5.

The case of By-laws contested before 18th December, 1854.

82. In case information be given to the Receiver-General by or on behalf of any Municipal elector, affected by any such By-law as is referred to in the seventy-third section of this Act, that the validity of such By-law, or of any Debentures issued under the authority of the same, had been contested before a legal tribunal before the eighteenth day of December, 1854, the Receiver-General shall not pay on such Debentures any money raised on the said Fund until the validity of such By-law or Debentures has been established by such tribunal, or until the proceedings thereon have been waived or determined. 18 Vic. cap. 13, sec. 5.

Force of such By-laws, &c.

83. This Act shall not be construed to give greater validity to any such By-law passed before the day last aforesaid which had not on the day last aforesaid been sanctioned by the Governor-in-Council, than was on such last mentioned day, possessed by such By-law; but this provision shall not apply to any such By-law after the Governor-in-Council has sanctioned the same. 18 Vic. cap. 13, sec. 5.

Loans before this Act not covered hereby.

84. Nothing herein contained shall be held to authorize the raising of any loan under this Act when such loan had been negotiated or the Debentures issued therefor sold to any party before the passing of this Act. *Vide* 18 Vic. cap. 13, sec. 5, *last proviso*, and 16 Vic. cap. 123, sec. 6.

Debentures issued before this Act

85. The Debentures issued before this Act takes effect upon the credit of the Consolidated Loan Fund for Upper

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takes effect, &c., valid.

Canada or for Lower Canada, under the authority of the Acts establishing a Consolidated Municipal Loan Fund for Upper Canada and for Lower Canada respectively, and of any Act amending the same, shall be and continue to be valid and legal, as if this Act had not been passed. 18 Vic. cap. 13, sec. 3, *proviso.*

Interpretation.

86. In this Act the word "Treasurer" shall include the Chamberlain of any City; the word "Mayor" shall include the Warden of any County, and the official title of any officer shall include any person by whom his duties may be legally performed; the word "Municipality" shall include all local Municipalities created under the Lower Canada Municipal and Road Act of 1855, or any Act amending the same, and all Corporations in Lower Canada, of Counties, Cities, incorporated Towns and Villages, Townships or Unions thereof, Parishes or Unions thereof, Unions of Parishes and Townships, whether there be Villages or not in such Unions; and the word "Sheriff" shall include all Sheriffs of Judicial Districts in Lower Canada. 16 Vic. cap. 22, sec. 10; 18 Vic. cap. 13, sec. 8; 20 Vic. cap. 42, sec. 1.

Preamble.

87. And whereas by an Act of the Provincial Parliament, passed on the fourth day of May, 1859, intituled, the Seignorial Amendment Act of 1859, it was declared that certain sums would be payable in final settlement of certain claims arising out of the abolition of the Seignorial Tenure in Lower Canada; and provision was made to charge any such sums upon the unappropriated Consolidated Municipal Loan Fund of Lower Canada, and for that purpose to restrain the issue of Debentures by the Municipalities in Lower Canada, under the authority of the said Act; and it was also expedient to amend the said Acts relating to the Consolidated Municipal Loan Fund, that is to say, the Act passed in the sixteenth year of Her Majesty's Reign, chapter twenty-two, intituled, *An Act to establish a Consolidated Municipal Loan Fund for Upper Canada*, as extended and amended by subsequent Acts, and to amend the same so as to afford relief to the Municipalities which had raised money by Debentures issued under the said Acts, and at the same time to secure the ultimate redemption of such Debentures by the Municipalities respectively liable; Therefore, except as hereinafter provided—no loan shall be raised by any Municipality under the foregoing sections of this Act, nor shall any Debentures be issued under them to any Municipality; but whenever the principal of any Debentures that have been issued upon the credit of the Consolidated

16 Vic. c. 22.

Except as herein mentioned, no further loan to be raised on the said

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Municipal Loan Fund either of Upper or Lower Canada becomes due, the Receiver-General, if he has then in his hands no sufficient funds appropriated to pay the same, may, with the consent of the Governor-in-Council, raise such funds by the issue of other Debentures upon the credit of the said Fund, redeemable at in such time as he deems expedient; but nothing in this section shall prevent the effect of any enactment authorizing the redemption of any such Debentures by the issue of Provincial Stock or Debentures; but nothing in this section or in the following sections of this Act shall be construed to prevent the issue of Debentures under by-laws, which had received the sanction of the Governor-in-Council before the 4th day of May, 1859, but under which by-laws, Debentures had not been issued to the parties entitled to receive the same; and the Governor-in-Council may authorize the issue, under the conditions of this Act, of Debentures on the credit of the Consolidated Municipal Loan Fund for Lower Canada, to an amount not exceeding in the whole four hundred thousand dollars, in addition to the amount issued before the said 4th May, 1859, or agreed to be issued, under by-laws sanctioned as aforesaid before that time. 22 Vic. cap. 15, sec. 1. (1859.)

Consolidated Municipal Loan Fund, &c.

Proviso: as to By-laws already sanctioned.

Proviso: a further sum not over $400,000 may be borrowed.

88. A sum equal to the amount of five cents in the dollar on the assessed yearly value, or a like percentage on the interest at six per cent. per annum on the assessed value, of all the assessable property in every Municipality which has raised money by Debentures issued under the Acts mentioned in the preamble, to the last preceding section shall be paid by such Municipality to the Receiver-General on or before the first day of December, in the year one thousand eight hundred and fifty-nine, and every year thereafter, unless and until the total amount in principal and interest payable by such Municipality to the Receiver-General under the said Acts by reason of such loss have been paid and satisfied, or a smaller sum shall be sufficient to satisfy the same in any year, in which case such smaller sum only shall be so paid. *Ib.* sec. 2.

Sum or rate to be paid yearly to the Receiver-General by the Municipalities which have raised money under the said Fund.

89. The sum to be raised under the last preceding section in any Municipality, shall never be less than the sum which the said percentage on the assessed value of the assessable property in such Municipality, according to the assessment rolls for the year 1858, in the same Municipality, would have produced;—but if in any year the assessed value of the assessable property in such Municipality be less than it was in the year 1858, the rate to be paid under the said last section to the

Proviso: such sum not to be less than the rate would have produced on the assessed value of 1858.

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Receiver-General shall be so increased as to make the sum so payable equal to what it would have been at the rate hereinbefore mentioned on the assessed value of the year 1858—but the said rate shall always be payable on any increased assessed value over that of the year 1858. *Ib.* cap. 15, sec. 2, No. 2. (1859.)

Such sum to be a first charge on the funds of the Municipality.

90 The sum mentioned in the two last preceding sections shall be the first charge upon all the funds of the Municipality, for whatever purpose or under whatever by-law they may have been raised; and no Treasurer or other officer of the Municipality shall, after the first day of December, in the year one thousand eight hundred and fifty-nine, pay any sum whatever out of any funds of the Municipality in his hands, until the sum then payable by the Municipality to the Receiver General under this Act has been paid to him; and if any such Treasurer or Municipal officer pays any sum out of the funds of his Municipality, contrary to the provision hereinbefore made, he shall be deemed guilty of a misdemeanor, and shall moreover be liable for every sum so paid, as for money received by him for the Crown. 22 Vic. cap. 15, sec. 2, No. 3 (1859).

Penalty on any Municipal officer contravening this section.

To be instead of payments required by other Acts.

91. The sum aforesaid shall be instead of the payments which the Municipality would otherwise be bound to make to the Receiver-General under the Acts hereinbefore mentioned; but if it be not paid as hereinbefore required, the Municipality shall be held to be in default, and shall be liable to be dealt with in the manner provided by this Act with regard to Municipalities in default. *Ib.* No. 4.

Municipality may pay a larger sum in any year.

92. Nothing in the four last preceding sections of this Act shall prevent any Municipality from raising a higher rate than herein mentioned for the purpose of paying the sums payable by such Municipality to the Receiver-General, or from paying a larger sum to him in any year than that hereby required. *Ib.* No. 5.

Interest to be charged.

93. The Receiver-General shall charge interest in his accounts with Municipalities under the said Acts, and this Act at the rate of six per centum per annum, on all moneys paid by him for any Municipality, whether as principal or interest, until the same are repaid. *Ib.* No. 6.

Rate to be levied instead of that required by secs. 53 to 57 of this Act.

94. Instead of the special rate mentioned in the fifty-third, fifty-fourth, fifty-fifth, fifty-sixth and fifty-seventh sections of this Act, there shall, in the present year one thousand eight hundred and fifty-nine, be levied upon all the assessable

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property in every Municipality which has raised money by Debentures issued under the Acts aforesaid, a rate of five cents in the dollar upon the assessed yearly value, and a like percentage on the interest at the rate of six per cent. per annum of the assessed value of such property, and a like rate in each year thereafter, until the total sums payable as principal or interest to the Receiver-General by reason of such Debentures, shall be paid off, or until a reduced rate shall be substituted by order in Council, as hereinafter mentioned. 22 Vic. cap. 15, sec. 3 (1859).

How to be levied.

95. Such rate shall be levied by virtue of this Act, but shall be entered on the Collector's Rolls, and collected and paid to the Treasurer of the Municipality in the same manner as ordinary rates imposed by Municipal by-laws, and whether any other rate is or is not imposed in the Municipality in the same year. 22 Vic. cap. 15, sec. 3, No. 2. (1859.)

Application of proceeds.

96. The proceeds of such rate shall be applied by the Treasurer exclusively towards the payment of the sum payable by the Municipality to the Receiver-General in each year, if such sum be not then already paid, but if it be then already paid or there be any surplus of the said rate after paying it, the rate or surplus may be applied to the other purposes of the Municipality, in like manner as the proceeds of other rates. *Ib.* No. 3.

Penalty on Municipal officers not complying with this Act.

97. Any Treasurer, Collector or other Municipal officer or functionary, or any member of the Municipal Council, wilfully neglecting or refusing to perform or concur in performing any official act requisite for the collection of the said rate, or misapplying or being a party to the misapplication of any portion of the proceeds thereof, shall be held guilty of misdemeanor, and such Treasurer, Collector or other Municipal officer, member or functionary and his sureties shall moreover be personally liable for any sum which, by reason of such neglect, misconduct, refusal or misapplication, shall not be paid to the Receiver-General at the time required by this Act, as for moneys received by such Member, Treasurer, Collector, or other Municipal officer or functionary for the Crown. *Ib.* No. 4.

Governor-in-Council may allow a lower rate whenever it shall be found sufficient.

98. Whenever it appears to the Governor-in-Council, upon the Report of the Receiver-General, that a lower rate in the dollar, than the rate aforesaid in any Municipality will be thereafter sufficient to pay the interest and contribution to the Sinking Fund payable by such Municipality in each year, under the Acts aforesaid, such lower rate may be substituted by

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order in Council for the rate aforesaid, for all the purposes of this Act. *Ib.* sec. 4 (1859).

Seignorial Amendment Act of 1859 cited.

99. Whereas by the Act passed in the twenty-second year of Her Majesty's Reign, intituled, The Seignorial Amendment Act of 1859, it is provided, that a sum of money bearing the same proportion to that which under the provisions of the said Act will be payable yearly to the Seigniors in Lower Canada, as the population of the Townships of Lower Canada shall, by the census of one thousand eight hundred and sixty-one, be found to bear to that of the Seigniories, shall be payable yearly, out of Provincial Funds, to the credit of the Lower Canada Municipal Loan Fund, but for the benefit of the Townships only: and whereas it is necessary to provide for the application of the said sum, to the purposes contemplated by the said Act, therefore—

How the sum given to the L. C. Townships shall be divided.

Advances may be made

1. The said sum shall be divided among the several Townships in Lower Canada, and the Town of Sherbrooke, in proportion to their respective population as shown by the said census of one thousand eight hundred and sixty-one; and in the meantime advances may be made yearly to each of them, according to such approximate estimate as the Governor-in-Council, according to the best information obtainable, may sanction, subject to adjustment in account so soon as such proportion shall be established.

Capital may be paid at 75 per cent.

2. It shall be lawful for the Governor-in-Council to direct the Receiver-General to pay the capital of the yearly sum coming to any such Townships or to the said Town, at the rate of seventy-five per cent. of such capital, in discharge of the whole.

County Councils may appropriate such sums by By-law.

3. It shall be lawful for the County Council of any County in Lower Canada including within its limits any Township or Townships, and for the Town Council of the said Town of Sherbrooke, to pass By-laws, with the approval of the Governor-in-Council, for appropriating the said yearly sum or capital, or any part of either, for any public improvement or improvements within the County or Town: Provided, that in Counties including a Seigniory or Seigniories, the County Councillors representing Municipalities composed of Townships or parts of Townships, shall alone be entitled to vote on any By-law for such appropriation; and such Councillors, or the majority of them, shall, as regards such By-law, form a quorum of the Council, whatever be their number: And provided also, that if such appropriation be not made by the Council of any

Proviso: who may vote on such By-laws

Proviso: if the County Council do not make

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such County within twelve months from the fourth day of May, one thousand eight hundred and fifty-nine, the several local Councils in such County, with the like approval, may pass by-laws for appropriating to the like use their share of such yearly sum or capital; and payment of such yearly sum or capital shall be made for the purposes of such appropriation only. the appropriation within a certain time.

4. Any Municipality having the powers as well of a County Council as of a local Council, shall be held to be a County Council within the meaning of this Act. 22 Vic. cap. 15, sec. 5 (1859). As to certain Municipalities.

100. So long as any sum of money is payable to the Receiver-General by any Municipality under the Acts aforesaid, or under the first eighty-six sections of this Act, he may always retain in his hands any sum of money which would otherwise be payable by him to such Municipality, crediting the same to it, in his accounts with it under the said Acts. *Ib.* sec. 6. Receiver-General may retain money due to the Province.

101. In the eighty-seventh and following sections of this Act, the word "Treasurer" includes every Secretary-Treasurer, Chamberlain, or other municipal officer or person entrusted with the custody of the funds of any Municipality; the expression "Assessment Roll" includes Valuation Rolls; and the roll which is to serve for any year is the Roll for that year, whatsoever be the year in which it was made; the expression "Collector's Roll" includes any roll or document showing the amount to be collected from each rate-payer; the word "Collector" includes the Secretary-Treasurer in places where that officer collects the Municipal taxes; and the word "Municipality" includes incorporated Cities and Towns. 22 Vic. cap. 15, sec. 7 (1859). Interpretation of certain words used in this Act.

102. Nothing in the eighty-seventh and following sections of this Act shall be interpreted as legalizing any By-law or proceedings had under the acts hereby amended, nor as legalising the issue of any Debentures on the credit of the Consolidated Municipal Loan Fund in consequence of such by-laws and proceedings. *Ib.* sec. 8. Act not to legalize any Debentures, &c., not otherwise valid.

As to Sums payable under the Seignorial Tenure Acts.

103. In case the sums payable out of the Consolidated Revenue Fund, under "The Seignorial Act of 1854," exceed in the whole the total amount of the sums arising from the sources of revenue specially appropriated by that Act, and any When a sum to be set apart for the exclusive

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Advantage of Upper Canada.

interest allowed thereon, as therein provided, a sum equal to such excess shall be set apart to be appropriated by Parliament for some local purpose or purposes in Upper Canada. 18 Vic. cap 3, sec. 18, last clause.

Payments under 18 Vic. cap. 103, sec. 3, to be considered in ascertaining the sum for Upper Canada.

104. The sum paid by the Receiver-General as interest under the third section of "The Seignorial Amendment Act, 1855," shall be taken into account in ascertaining the sum to which Upper Canada may be entitled for local purposes under "The Seignorial Act of 1854," as in the last section mentioned. 18 Vic. cap. 103, sec. 3, proviso.

Sums payable to Seigniors under this Act, to be deducted from the Lower Canada Municipal Loan Fund.

105. A sum of money equal in amount to the capital at six per cent. per annum, of the sum which under the provisions of "The Seignorial Amendment Act of 1859," will be payable yearly to Seigniors in Lower Canada out of Provincial Funds added to the sum of thirty-five thousand pounds payable to the Seminary as therein also provided, shall be deducted from the amount of the Lower Canada Municipal Loan Fund. 22 Vic. cap. 48, sec. 19 (1859).

Sum payable to Upper Canada Municipal Loan Fund.

106. A sum of money equal to that which under the provisions of the said "Seignorial Amendment Act of 1859," will be payable yearly to Seigniors in Lower Canada out of the Provincial Funds, over and above the amount payable to them out of the Fund for the relief of the *censitaires* under "The Seignorial Act of 1854," shall be payable yearly out of the Consolidated Revenue Fund of this Province to the credit of the Upper Canada Municipal Loan Fund, in reduction of the advances that have been or may be made from time to time from Provincial funds on account of the said Fund. *Ib.* sec. 20.

Payment not to diminish liability of Municipalities.

107. Such payment shall not in any way extinguish or diminish the individual liability of the Municipalities which have become indebted upon the security of the said Loan Fund; but the said yearly sum shall, so soon as the Province ceases to be under advances to the said Loan Fund, be added to the Upper Canada Municipalities Fund (Clergy Reserves), and distributed in like manner; and so long as any Municipality shall at any time be in default in any payment which ought to have been made by it to the said Loan Fund, such Municipality shall have no share in any distribution of the Upper Canada Municipalities Fund (arising from the Clergy Reserves) which shall be made while such Municipality is so in default, and the share it would otherwise have had shall go to the other Municipalities. 22 Vic. cap. 48, sec. 20 (1859).

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108. The sums payable under the two last sections, shall be in addition to the sum to be appropriated for local purposes in Upper Canada under the Seignorial Act of 1854. *Ib.* s. 20.

To be in addition to sum payable under Act of 1854.

109. A sum of money bearing the same proportion to that which under the foregoing provisions will be payable yearly to the Seigniors in Lower Canada, as the population of the Townships of Lower Canada shall, by the census of one thousand eight hundred and sixty-one, be found to bear to that of the Seigniories, shall be payable yearly, out of Provincial funds, to the credit of the Lower Canada Municipal Loan Fund, but for the benefit of the Townships only, including St. Armand East and West, in the County of Missisquoi. *Ib.* sec. 21.

Sum payable for the benefit of the townships in Lower Canada.

CON. STAT. CAN.—CHAPTER LXXXIV.

AN ACT RESPECTING REGISTRATION AND TRANSFER OF MUNICIPAL AND CERTAIN OTHER DEBENTURES.

Whereas it would tend greatly to the increased value of Debentures issued under the authority of By-laws of Municipal and other corporate bodies, passed for the purpose of raising moneys, and also to the better security of the holders of the same, that a system of Registration should be adopted, and a priority of lien in respect thereof given under certain conditions: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Preamble.

1.—Registration.

1. If not already done, it shall be the duty of the Clerk or Secretary-Treasurer or person acting as such, of every Municipal or Provincial Municipal Corporation, and of the Clerk or Secretary, or person acting as such, of any other Corporate Body to transmit to the Registrar of the County or Registration Division in which such Municipal Corporation or other corporate body or its principal office is situated, on or before the fourth day of November, 1859, a copy, duly certified as hereinafter provided, of each and every By-law of such Municipal or Provisional Municipal Corporation or other corporate body, heretofore passed, under or by authority of which respectively any sum or sums of money may have been raised by the issue of Debentures, together with a Return, in the form specified in the Schedule hereunto annexed, marked A, showing the title or objects of each

If not already done, certified copies of all By-laws passed by Municipal and corporate bodies under which Debentures have issued, shall be transmitted to the proper Registrar forthwith, together with a Return as in Schedule A.

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such By-law, the number of Debentures issued and the amounts thereof respectively, the amounts already heretofore paid or redeemed by the said Corporation on the account of the same, the balance still remaining outstanding and payable thereunder respectively, the dates at which the same respectively fall due, and the amount of yearly rate to pay off the same, and the assessed value of the real and personal estate of the Municipality or Company. 22 Vic. cap. 91, sec. 1; 22 Vic. cap. 23, secs. 1, 4 (1859).

Certified copies of all By-laws under which Debentures are intended to be issued, to be transmitted to the proper Registrar, &c.

2. It shall be the duty of the Clerk or Secretary-Treasurer person acting as such, of every Municipal or Provisional Municipal Corporation, and of the Clerk or Secretary, or person acting as such, of any other corporate body, within two weeks after the final passing of any by-law after this Act takes effect, made and passed by such Corporation for the purpose of raising money by the issue of Debentures, and before the sale or contract for sale of any such Debentures issued or intended to be issued thereunder, to transmit to the Registrar of the County or Registration Division in which such Municipal Corporation or other corporate body, or its principal office, is situated, a copy, duly certified as hereinafter provided, of each and every By-law hereafter made and passed as aforesaid by such Municipal or Provisional Municipal Corporation or other corporate body, together with a Return, in the form specified in the Schedule B, hereunto annexed, showing the title or objects of each such By-law, the amounts to be raised thereunder, the number of Debentures to be issued thereunder, the amounts thereof respectively, the dates at which the same respectively fall due, the assessed value of the real and personal estate belonging to such Corporation or Company, the assessed value of the real and personal estate of the Municipality, and the amount of yearly rate in the dollar to liquidate the same. 22 Vic. cap. 91, sec. 2 (1858).

Return to be made to Auditor.

3. The Clerk or Secretary-Treasurer, or person acting as such, of every Municipal or Provisional Municipal Corporation, and the Clerk or Secretary, or person acting as such, of any other corporate body (excepting such as are in and by this Act excepted), shall, on or before the tenth day of January in each year, transmit to the Auditor a Return, made up to the thirty-first day of December then last past, in the form specified in the Schedule hereunto annexed, marked C, showing the name of the Municipal or Provisional Municipal Corporation or other corporate body, the amount of its debt, if any, distinguishing the amount of debt incurred under the Muni-

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cipal Loan Fund Acts, if any, from the remainder of its debt, the assessed value of the real and personal estate belonging to such Corporation or Company, or the assessed value of the real and personal estate of the Municipality, or both, as the case may be, the total rates, if any, per dollar, assessed on such last mentioned property for all purposes, and the amount of interest due by the Corporation or Company, or by the Municipality. 22 Vic. cap. 23, sec. 2 (1859).

Auditor to compile tables from such Returns and lay them before Parliament.

4. The Auditor shall annually compile from the Returns so transmitted a statement in tabular form, showing the names of the several Corporations in one column, and the contents of their respective Returns against their respective names in other columns corresponding to those in the said Schedule; and he shall cause copies thereof to be laid before each branch of the Legislature within the first fifteen days of the session next after the completion of the same, or if Parliament be sitting when the same is completed, as soon as may be after such completion. 22 Vic. cap. 23, sec. 3 (1859).

Registrar to file such By-laws, and to keep books with copies of the Returns required by secs. 1, 2.

5. The Registrar of the County or Registration Division in which such Municipal Corporation or other corporate body or its principal office is situated, shall receive and file in his office the several By-laws required to be transmitted to him as hereinbefore provided, and shall cause to be entered in a book provided for that purpose, true and correct copies of the Returns hereinbefore required by the first and second sections of this Act. 22 Vic. cap. 91, sec. 3 (1858).

If requested, the Registrar may register the name of such holder of any Debenture, and registration to be *prima facie* evidence.

6. The Registrar of each County or Registration Division aforesaid, shall provide a Book of Registration, wherein he shall, at the request of the original holder or holders, or any subsequent transferee or transferees thereof respectively, from time to time, cause to be entered and registered the name of such original holder or holders, or of such subsequent transferee or transferees, and such holder or last registered transferee in such Book of Registration shall be deemed *primâ facie* the legal owner and possessor thereof. *Ib.* sec. 4.

Mode in which By-law shall be certified.

7. All By-laws mentioned in the first section of this Act shall be certified and authenticated in the case of a Municipal or Provisional Municipal Corporation, by the Seal of the Corporation, and by the head, and by the Clerk or Secretary-Treasurer thereof respectively, being such at the time of the date of such certificate and authentication; and all By-laws mentioned in the second section of this Act shall be certified and authenticated by the Seal of the Corporation, and by the

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signature of the head thereof, or of the person presiding at the meeting at which the original By-law has been made and passed, and also by that of the Clerk or Secretary of such Corporation; and all By-laws of other corporate bodies shall be attested and authenticated by the Seal of such corporate body and by the signature of the head thereof, *Ib.* sec. 5.

By-laws, returns and books of entry in Registry Office, to be open to inspection.

8. The certified copies of all By-laws hereinbefore referred to and transmitted as aforesaid, and also the Returns in the first and second sections mentioned, and the book or books of entry of such Returns and of Registration, shall be open to public inspection and examination, and access had thereto at all seasonable times and hours, upon payment of certain fees as hereinafter provided. 22 Vic. cap. 91, sec. 6 (1858).

Fees to be payable under this Act.

9. The following fees shall be paid to Registrars under this Act:

	$	c.
For registration of each certified copy of By-laws, the sum of.....	2	00
For registration of any Returns, as prescribed in Schedules A and B, for each such Return, the sum of	1	00
For registration of the name of holder or transferee of any number of Debentures not exceeding five, the sum of.....	0	25
Over five and not exceeding fifteen, the sum of.....	0	50
Over fifteen and not exceeding thirty, the sum of.....	0	75
Upwards of thirty, the sum of	1	00
For making search, inspecting each copy of By-law, and examining entries connected therewith (22 Vic. cap. 91, sec. 7).....	1	00

Meaning of term "final passing," as to By-laws to be submitted to the Governor.

10. In all such cases as require the submission of any By-law or By-laws to the Governor-General of this Province for his sanction, such sanction must first be obtained to bring the same within the meaning of the words "final passing thereof" in the second section of this Act. *Ib.* sec. 8.

Act not to extend to Railway Companies or Ecclesiastical Corporations, &c.

11. The foregoing sections of this Act shall not extend to the By-laws or Debentures thereunder of any Railway Company or any Ecclesiastical Corporation heretofore incorporated or hereafter to be incorporated, or the Debentures issued by any religious denomination in its corporate capacity, either in Upper or Lower Canada. *Ib.* sec. 9.

Penalty on Officers of Corporations neglecting

12. Any Clerk, Secretary, or Secretary-Treasurer, as aforesaid, of any Municipality or corporate body as aforesaid, neglecting to perform, within the proper period, any duty

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devolving upon him in virtue of this Act, shall be subject to a fine of two hundred dollars, or in default of payment thereof to imprisonment until such fine is paid, but for a period not exceeding twelve months, to be prosecuted for in the name of the Attorney-General, in any Court having competent jurisdiction. 22 Vic. cap. 23, sec. 5 (1859). their duties under the said Act and this Act.

TRANSFER.

13. Any Debenture heretofore issued, or issued after this Act takes effect, under the formalities required by law, by any Municipal or Provisional Corporation, payable to bearer or to any person named therein or bearer, may be transferred by delivery, and such transfer shall vest the property of such Debenture in the holder thereof, and enable him to maintain an action thereupon in his own name. 18 Vic. cap. 80, s. 1. Debentures payable to bearer may be transferred by delivery.

14. Any Debenture issued as aforesaid, payable to any person, or to any person or order, shall (after general endorsation thereof by such person) be transferable by delivery from the time of such endorsation, and the transfer shall vest the property thereof in the holder, and enable him to maintain an action thereupon in his own name. 18 Vic. cap. 80, sec. 2. If to order, to be endorsed.

15. In any suit or action upon any such Debenture, it shall not be necessary for the plaintiff to set forth in the declaration or other pleading, or to prove, the mode by which he or any other person became the holder of such Debenture, or to set forth or to prove the notices, by-laws, or other proceedings under or by virtue of which the Debenture was issued, but it shall be sufficient in such pleading to describe the plaintiff as the holder of the Debenture (alleging the general endorsation if any), and shortly to state its legal effect and purport, and to make proof accordingly. 18 Vic. cap. 80, sec. 3. In declaring thereon, what facts to be stated.

16. Any such Debenture issued as aforesaid shall be valid and recoverable to the full amount thereof, notwithstanding its negotiation by such Corporation at a rate less than par, or at a rate of interest greater than six per centum per annum, and shall not be impeachable in the hands of a *bonâ fide* holder for value, without notice. 18 Vic. cap 80, sec. 4. Good for full amount, though discounted at a less sum.

17. This Act may be cited as "The Debentures Registration and Transfer Act." 22 Vic. cap. 91, sec. 11 (1858).

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SCHEDULE A.—See Sec. 1.

Return, as required by the Consolidated Statute of Canada, intituled, *An Act* (*here insert title of this Act*), of Debentures issued by (*here insert title of Corporation*).

1	2		3	4	5	6		7	
Title or Objects of each By-law.	Number of Debentures issued, and Amounts.		Amount raised under each By-law.	Amount paid or redeemed on account of said Debentures.	Balance still remaining outstanding and payable on said Debentures.	Date at which Debentures fall due, and Amount of yearly Rate to pay off same.		Assessed value of Real and Personal Estate of the Municipality (*or* Company).	
	Number.	Amounts.				Dates of Debentures falling due	Amount of yearly Rate in the $	Real.	Personal.

Dated at —— this —— day of ——, A.D. 18—

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SCHEDULE B.—See Sec. 2.

Return, as required by the Consolidated Statute of Canada, intituled, *An Act* (*here insert title of this Act*), of Debentures issued by (*here insert title of Corporation*).

1	2	3		4	5		6		7
Title or Objects of the By-law.	Amount to be raised.	Number of Debentures and Amounts.		Dates when payable.	Assessed value of Real and Personal Estate belonging to such Corporation (*or* Company).		Assessed value of the Real and Personal Estate of the Municipality of (Town, Township, County, City *or* Village, *as the case may be*).		Amount of yearly Rate in the dollar to liquidate same.
		Number.	Amounts.		Real.	Personal.	Real.	Personal.	

Dated at —— this —— day of ——, A.D. 18—

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SCHEDULE A.—See Sec. 1.

RETURN, as required by the Consolidated Statute of Canada, intituled, *An Act* (*here insert title of this Act*), of Debentures issued by (*here insert title of Corporation*).

1	2		3	4	5	6		7	
Title or Objects of each By-law.	Number of Debentures issued, and Amounts.		Amount raised under each By-law.	Amount paid or redeemed on account of said Debentures.	Balance still remaining outstanding and payable on said Debentures.	Date at which Debentures fall due, and Amount of yearly Rate to pay off same.		Assessed value of Real and Personal Estate of the Municipality (*or* Company).	
	Number.	Amounts.				Dates of Debentures falling due	Amount of yearly Rate in the $	Real.	Personal.

Dated at —— this —— day of ——, A.D. 18—

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SCHEDULE B.—See Sec. 2.

Return, as required by the Consolidated Statute of Canada, intituled, *An Act (here insert title of this Act)*, of Debentures issued by *(here insert title of Corporation)*.

1	2	3		4	5		6		7
Title or Objects of the By-law.	Amount to be raised.	Number of Debentures and Amounts.		Dates when payable.	Assessed value of Real and Personal Estate belonging to such Corporation (*or* Company).		Assessed value of the Real and Personal Estate of the Municipality of (Town, Township, County, City *or* Village, *as the case may be*).		Amount of yearly Rate in the dollar to liquidate same.
		Number.	Amounts.		Real.	Personal.	Real.	Personal.	

Dated at —— this —— day of ——, A.D. 18—

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SCHEDULE C.—See Sec. 3.

RETURN, as required by the Consolidated Statute of Canada, intituled, *An Act* (*here insert title of this Act*) of Debentures issued by (*here insert title of Corporation*).

LIABILITIES.			Assessed value of Real and Personal Estate belonging to the Body Corporate.		Assessed value of the Real and Personal Estate of the Municipality.		Total Rate Assessed for all purposes.	Interest due by the Corporation (*or* Company, *or* Municipality).
Under Municipal Loan Fund Acts.	All other Liabilities.	Total Liabilities.	Real.	Personal.	Real.	Personal.		

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CON. STAT. CAN.—CHAPTER LXXXV.

AN ACT RESPECTING CERTAIN ROADS AND BRIDGES.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Use of public roads in cities and towns vested in the Municipality.

1. The right to use as Public Highways all Roads, Streets and Public Highways within the limits of any City or incorporated Town in this Province, shall be vested in the Municipal Corporation of such City or incorporated Town (except in so far as the right of property or other right in the land occupied by such highways have been expressly reserved by some private party when first used as such road, street or highway, and except as to any concession road or side road within the City or Town where the persons now in possession or those under whom they claim have laid out streets in such City or Town, without any compensation therefor, in lieu of such concession or side road. 13, 14 Vic. cap. 15, sec. 1.

The Corporation to repair, &c.

2. Such roads, streets and highways, so long as they remain open as such, shall be maintained and kept in proper repair by and at the cost of such Corporation, whether they were originally opened and made by such Corporation, or by the Government of this Province, or of either of the late Provinces of Upper or Lower Canada, or by any other authority or party. 13, 14 Vic. cap. 15, sec. 1.

Consequences of neglect

3. If the Municipal Corporation of any such City or incorporated Town fail to keep in repair any such road, street or highway within the limits thereof, such default shall be a misdemeanor, for which such Corporation shall be punished by fine in the discretion of the Court before whom the conviction is had; and such Corporation shall be also civilly responsible for all damages sustained by any party by reason of such default, provided the action for the recovery of such damages be brought within three months after the same has been sustained. 13, 14 Vic. cap. 15, sec. 1.

Government roads may be ceded to.

4. Any public road or bridge made, built or repaired at the expense of the Province, and which was, on the tenth day of August, one thousand eight hundred and fifty, under the management and control of the Commissioners of Public Works, may, by proclamation of the Governor, issued by and with the advice and consent of the Executive Council, be declared to be no longer under the management and control of such Commissioners. 13, 14 Vic. cap. 15, sec. 2.

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After which Municipal authorities to repair.

5. From and after a day to be named in such Proclamation, such road or bridge shall cease to be under the management and control of such Commissioners, and no tolls shall be by them afterwards levied thereon, but such road or bridge shall be under the control of the Municipal authorities of the locality and of the Road officers thereof, in like manner with other public roads and bridges therein, and shall be maintained and kept in repair under the same provisions of law. 13, 14 Vic. cap. 15, sec. 2.

CON. STAT. CAN.—CHAPTER LXXXVI.

AN ACT EXEMPTING CERTAIN VEHICLES, HORSES AND OTHER CATTLE FROM TOLLS ON TURNPIKE ROADS.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Persons going to or returning from divine service exempted from toll.

1. All persons going to or returning from Divine Service on any Sunday or obligatory holiday, in or upon and with their own carriages, horses or other beasts of draught, and also their families and servants being in or upon and with such carriages, horses or other beasts of draught, shall pass toll-free through every turnpike or toll gate on any turnpike road through which they may have occasion to pass, whether such turnpike road and the tolls thereon belong to the Province, or to any local or Municipal authority, or body of Trustees or Commissioners for local purposes, or to any incorporated or unincorporated Company, or to any other body or person. 7 Vic. cap. 14, sec. 2.

Vehicles, cattle, &c., crossing roads when a farm divided by the road, exempted from toll, when.

2. No vehicle, laden or unladen, and no horses or cattle belonging to the proprietor or occupier of any lands divided by any turnpike road, shall be liable to toll on passing through any toll-gate on such road (at whatever distance the same may be from any City or Town) for the sole purpose of going from one part of the lands of such proprietor or occupier to another part of the same; Provided such vehicle, horses or cattle do not proceed more than half a mile along such turnpike road, either in going or in returning, and for farming or domestic purposes only. 7 Vic. cap. 14, sec. 8.

Vehicles, &c. laden with manure passing from Cities and Towns exempt from tolls.

3. Every vehicle laden solely with manure, brought from any City in Lower Canada, or any City or incorporated Town in Upper Canada, and employed to carry the same into the country parts for the purposes of agriculture, and the horse or horses, or other beast of draught, drawing such vehicle,

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shall pass toll-free through every turnpike gate or toll-gate on any turnpike road within twenty miles of such City or Town, as well in going from such City or Town, as in returning thereto, if then empty. 7 Vic. cap. 14, sec. 1.

This Act not to apply to bridges.

4. This Act shall not extend to any toll bridge, the tolls on which are vested in any party other than the Crown. 7 Vic. cap. 14, sec. 4.

CON. STAT. CAN.—CHAPTER LXXXVII.

AN ACT TO EXEMPT FIREMEN FROM CERTAIN LOCAL DUTIES AND SERVICES.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

The corporate authorities, &c., in any city or town, in which a Fire Company is established, may cause the members of such Company to be exempted from serving as jurors, and from certain other offices.

1. Whenever any Company or Companies have been regularly enrolled in any City, Town, or place in which the formation of Companies of Firemen is by law authorized and regulated, the corporate authorities or Board of Police in such City or Town, or if there be no such authorities or Board, the Justices of the Peace, of the District or County in which such Town may be situate, in General Quarter Sessions assembled, or the majority of them, being satisfied of the efficiency of such persons and accepting their enrolment, shall direct the Clerk of the Peace for the District or County, to grant to each member of such Company a certificate that he is enrolled on the same, which certificate shall exempt the individual named therein, during the period of his enrolment, and his continuance in actual duty as such Fireman, from Militia duty in time of peace, from serving as a Juryman, or a Constable, and from all Parish and Town offices. 4, 5 Vic. cap. 43, sec. 2.

Such exemption may be taken away in case of misconduct on the part of any member of any such Company.

2. The corporate authorities or Board of Police in any City or Town, or if there be no such authorities or Board, the Justices of the Peace for the District or County, or the majority of them, at any general or adjourned Sessions, upon complaint to them made of neglect of duty by any individual of such Fire Company, shall examine into the same; and for any such cause, and also in case any individual of such Company be convicted of a breach of any of the rules legally made for the regulation of the same, may strike off the name of any such individual from the list of such Company, and thenceforward the certificate granted to such individual as aforesaid

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shall have no effect in exempting him from any duty or service in the next preceding section of this Act mentioned. 4, 5 Vic. cap. 43, sec. 3.

The said authorities may cause such Companies to be formed, or defer such formation, as they deem most expedient.

3. It shall be in the discretion of the corporate authorities or Boards of Police, or of the Justices of the Peace for the District or County as aforesaid, respectively, to consent to the formation, as aforesaid, of any Fire Company in any such City, Town or place, as aforesaid, or to defer the same until circumstances may in their opinion render it expedient that such Company should be formed; and they may also, in their discretion, from time to time discontinue or renew any such Company or Companies. 4, 5 Vic. cap. 43, sec. 3.

Firemen having served seven years exempted from serving in certain offices.

4. When any member of any Company of Firemen, regularly enrolled, in any City, Town or place in which the formation of Companies of Firemen is by law authorized and regulated, has regularly and faithfully served for the space and term of seven consecutive years in the same, the said member shall be entitled to receive, upon producing due proof of his having served seven consecutive years as aforesaid, a certificate from the Clerk of the Peace of the District or County in which he resides, or from the Clerk of the corporate body or Board of Police under whose authority the said Company has been established, that he has been regularly enrolled and served as a member of the said Fire Company for the space of seven years; and such certificate shall exempt the individual named therein from Militia duty in time of peace, from serving as a Constable, and from all Parish and Town offices, but this shall not exempt any such fireman from serving as a juryman. 12 Vic. cap. 36.

Firemen having served seven years entitled to a certificate to that effect.

5. The Municipal Council of any City wherein the formation or Companies of Firemen is by law authorized and regulated, may by by-law enact that when a member of any Company of Firemen regularly enrolled in such City has regularly and faithfully served in such Company for the space and term of seven years consecutively, such member, upon producing due proof of his having so served; shall receive a certificate from the Clerk of the Council of the City or the Clerk of the corporate body under whose authority the Company was established, that he has been regularly enrolled and served as a member of the said Fire Company for the space of seven years. 14, 15 Vic. cap. 85, sec. 1.

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6. Such certificate shall exempt the individual named therein from the payment of any personal Statute Labour tax thereafter, and from serving as a juror on the trial of any cause in any Court of law within this Province. 14, 15 Vic. cap. 85, sec. 1.

Such certificate shall exempt from statute labor tax and from serving as jurors.

CON. STAT. CAN.—CHAPTER LXXXVIII.

AN ACT RESPECTING THE INVESTIGATION OF ACCIDENTS BY FIRE.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. The Coroner within whose jurisdiction any City, or incorporated Town, or incorporated Village in this Province, lies, whenever any fire has occurred, whereby any house or other building in such City, Town or Village has been wholly or in part consumed, shall institute an inquiry into the cause or origin of such fire, and whether it was kindled by design, or was the result of negligence or accident, and act according to the result of such inquiry. 20 Vic. cap. 36, sec. 2.

Coroner to inquire into the origin of fires in cities, towns and villages.

2. For the purpose aforesaid, such Coroner shall summon and bring before him all persons whom he deems capable of giving information or evidence touching or concerning such fire, and shall examine such persons on oath, and shall reduce their examinations to writing, and return the same to the Clerk of the Peace for the District or County within which they have been taken. 20 Vic. cap. 36, sec. 2.

Evidence to be taken on oath.

3. It shall not be the duty of the Coroner to institute an inquiry into the cause or origin of any fire or fires by which any house or other building has been wholly or partly consumed, nor shall such inquiry be had, until it has first been made to appear to such Coroner that there is reason to believe that such fire was the result of culpable or negligent conduct, or design, or occurred under such circumstances as, in the interests of justice and for the due protection of property, require an investigation. 20 Vic. cap. 36, sec. 2.

Such inquiry not to take place except under certain circumstances.

4. The Coroner may, in his discretion, or in conformity with the written requisition of any Agent of an Insurance Company, or of any three householders in the vicinity of any such fire, impannel a jury chosen from among the householders resident in the vicinity of the fire, to hear the evidence

Jury may be impannelled in certain cases.

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that may be adduced touching or concerning the same, and to render a verdict under oath thereupon in accordance with the facts. 20 Vic. cap. 36, sec. 3.

Coroner may enforce attendance of witnesses.

5. If any person summoned to appear before any Coroner acting under this Act, neglects or refuses to appear at the time and place specified in the summons, or if any such person appearing in obedience to any such summons, refuses to be examined or to answer any questions put to him in the course of his examination, the Coroner may enforce the attendance of such person, or compel him to answer, as the case may require, by the same means as such Coroner might use in like cases at ordinary inquests before him. 20 Vic. cap. 36, sec. 4.

Punishment of jurors not attending, &c.

6. If any person, having been duly summoned as a juror upon any such inquiry, does not, after being openly called three times, appear and serve as such juror, the Coroner may impose upon the person so making default such fine as he thinks fit, not exceeding four dollars; and such Coroner shall make out and sign a certificate containing the name, residence, trade or calling of such person, together with the amount of the fine imposed, and the cause of such fine, and shall transmit the certificate to the Clerk of the Peace in the District or County in which such defaulter resides, on or before the first day of the Quarter Sessions of the Peace then next ensuing for such District or County, and shall cause a copy of such certificate to be served upon the person so fined, by leaving it at his residence, within a reasonable time after such inquest; and all fines and forfeitures so certified by such Coroner shall be estreated, levied and applied in like manner, and subject to like powers, provisions and penalties in all respects, as if they had been parts of the fines imposed at such Quarter Sessions. 20 Vic. cap. 36, sec. 5.

Fines, and how levied.

Certain powers of Coroner not to be affected

7. Nothing herein contained shall affect any power by law vested in any Coroner, for compelling any person to attend and act as a juror, or to appear and give evidence before him on any inquest or other proceeding, or for punishing any person for contempt of Court in not so attending and acting, or appearing and giving evidence, or otherwise, but all such powers shall extend to and be exercised in respect of inquiries under this Act. 20 Vic. cap. 36, sec. 5.

Inspectors of Police to have powers under this Act at

8. The Inspector and Superintendents of Police or Recorders for the Cities of Quebec and Montreal, shall have, with regard to fires occurring within the said Cities respectively, all the powers, authorities and duties conferred on Coroners by

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this Act; and within the said Cities all such inquests or inquiries shall be held respectively by such Inspectors and Superintendents of Police or the Recorders thereof. 20 Vic. cap. 36, sec. 6. Quebec and Montreal.

9. When any such inquiry has been held by the Coroner, and not by any other officer as aforesaid, in conformity with this Act, the Coroner holding the same shall be entitled therefor to the sum of ten dollars; and should the said inquiry extend beyond one day, then to ten dollars *per diem* for each of two days thereafter, and no more: And the official order of such Coroner for the same upon the Treasurer of the City, Town or Village in which such inquiries have been holden, shall be a sufficient warrant to, and the said Treasurer, out of any funds he may then have in the Treasury, shall pay the same upon the presentation of such order. 20 Vic. cap. 36, sec. 7; *see* 4, 5 Vic. cap. 24, sec. 8. Allowance to Coroners holding inquiries, and how paid.

CON. STAT. CAN.—CHAPTER XCV.

AN ACT RESPECTING LOTTERIES.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. If any person makes, prints, advertises or publishes, or causes or procures to be made, printed, advertised or published, any proposal, scheme or plan for advancing, lending, giving, selling, or in any way disposing of any property, either real or personal, by lots, cards, tickets or any mode of chance whatever, or sells, barters, exchanges, or otherwise disposes of, or causes or procures, or aids or assists in the sale, barter, exchange or other disposal of, or offers for sale, barter or exchange any lot, card, ticket, or other means or device for advancing, lending, giving, selling, or otherwise disposing of any property, real or personal, by lots, tickets, or any mode of chance whatever, such person shall, upon conviction thereof before any Mayor, Alderman, or other Justice of the Peace, upon the oath of any one or more credible witnesses, or upon confession thereof, forfeit the sum of twenty dollars for each and every such offence, together with costs, to be levied by distress and sale of the offender's goods, by warrant under the hand and seal of any such Mayor, Alderman or other Justice of the Peace of the City, Town, County or place where such offence has been committed; which said forfeiture shall be applied, half to the Penalty for making or publishing a lottery or scheme of any kind. How enforced and applied.

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informer, and the other half shall be paid to the Treasurer or Chamberlain of the Municipality in which such offence was committed, and shall form part of the funds thereof. 19 Vic. cap. 49, sec. 1.

Penalty for buying or receiving lottery tickets.

2. Any person buying, bartering, exchanging, taking or receiving any such lot, card, ticket, or other device as in the first section of this Act mentioned, shall, upon conviction thereof, in like manner as therein mentioned, forfeit the sum of twenty dollars for each offence, to be recovered and applied as aforesaid. 19 Vic. cap. 49, sec. 2.

Sales, gifts, &c., founded on lotteries, to be null and void.

3. Any sale, loan, gift, barter or exchange of any real or personal property, by any lottery, ticket, card, or other mode of chance whatever, depending upon, or to be determined by chance or lot, shall be void to all intents and purposes whatsoever; and all such real or personal property so sold, lent, given, bartered or exchanged, shall be forfeited to such person as will sue for the same by action or information in any Court of Record in this Province. 19, 20 Vic. cap. 49, sec. 3.

As to purchasers without notice.

4. No such forfeiture shall affect any right or title to such real or personal property acquired by any *bona fide* purchaser for valuable consideration without notice. 19, 20 Vic. cap. 49, sec. 3.

Committal for non-payment of penalties.

5. If any person so convicted as aforesaid, has not sufficient goods and chattels whereon to levy the penalties authorized by this Act, or does not immediately pay the said penalties, or give security for the same, such Mayor, Alderman or other Justice, convicting such person, shall commit him to the common gaol of the County or District in which the offence was committed, for a period not exceeding three months, unless such fine and costs be sooner paid. 19, 20 Vic. cap. 49. sec. 4.

Act to extend to publication of foreign lottery schemes.

6. The provisions of this Act shall extend to the printing or publishing, or causing to be printed or published, of any advertisement, scheme, proposal or plan of any foreign lottery, and to the sale or offer for sale of any ticket, chance or share in any such lottery, or to the advertisement for sale of such ticket, chance or share. 19, 20 Vic. cap. 49, sec. 5.

Interpretation clause.

7. The term "personal property," in this Act, shall include every description of money, chattel and valuable security, and every kind of personal property whatever; and the term "real property" shall include every description of land, and all estates and interests therein. 19, 20 Vic. cap. 49, sec. 6.

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8. Any person convicted under this Act shall have the same right of appeal from the judgment of the convicting Justice, as in other cases of summary convictions, where an appeal is allowed by law. 19, 20 Vic. cap. 49, sec. 7. Appeal from convictions under this Act.

9. Nothing in this Act contained shall prevent joint tenants, or tenants in common, or persons having joint interests, *droits indivis*, in any real or personal property, from dividing such property by lot or chance, in the same manner as if this Act had not been passed. 19, 20 Vic. cap. 49, sec. 8. Act not to extend to *bona fide* division of property in common.

CON. STAT. CAN.—CHAPTER XCVI.

AN ACT RESPECTING CRUELTY TO ANIMALS.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. If any person wantonly, cruelly, or unnecessarily beats, binds, ill-treats, abuses or tortures any Horse, Mare, Gelding, Bull, Ox, Cow, Heifer, Steer, Calf, Mule, Ass, Sheep, Lamb, Pig or other cattle, or any Poultry, or any Dog or domestic animal or bird, or if any person driving any cattle or other animal is by negligence or ill-usage in the driving thereof, the means whereby any mischief, damage or injury is done by any such cattle or other animal, every such offender, being convicted of any or either of the said offences, before any one Justice of the Peace for the City, Town, District or County in which the offence has been committed, shall, for every such offence, forfeit and pay (over and above the amount of the damage or injury, if any, done thereby, which damage or injury shall and may be ascertained and determined by such Justice) such a sum of money, not exceeding ten dollars nor less than one dollar, with costs, as to such Justice seems meet. 20 Vic. cap. 31, sec. 1. Penalty on persons guilty of cruelty to animals. Penalty and damages, how enforced

2. The offender shall, in default of payment, be committed to the common gaol or house of correction for the City, Town, District or County in which the offence was committed, there to be imprisoned for any time not exceeding fourteen days. 20 Vic. cap. 31, sec. 1. In default.

3. Nothing in this Act contained shall prevent or abridge any remedy by action against the employer of any such offender, where the amount of the damage is not sought to be recovered by virtue of this Act. 20 Vic. cap. 31, sec. 1. Any other remedy by action saved

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As to binding animals carried to market.

4 Nothing hereinbefore contained shall make it unlawful for any person to bind any sheep, lambs, calves or pigs for the purpose of conveying and delivering them to or at any market, at a distance not exceeding fifteen miles from the owner's house or premises; but such animals shall not remain so bound for a longer space than half-an-hour after their arrival at such market. 20 Vic. cap. 31, sec. 1.

Warrant not required by those who see the offence committed.

5. When any of the said offences happen, any constable or other peace officer, or the owner of any such horse, cattle, animal or poultry, upon view thereof, or upon the information of any other person (who shall declare his or their name or names and place or places of abode to the said constable or other peace officer) may seize and secure, by the authority of this Act, and forthwith and without any other authority or warrant, may convey any such offender before a Justice of the Peace within whose jurisdiction the offence has been committed, to be dealt with according to law; and such Justice shall forthwith proceed to examine upon oath any witness or witnesses who appear or are produced to give information touching any such offence, which oath the said Justice may administer. 20 Vic. cap. 31, sec. 4.

Committal of persons apprehended and refusing to give their names.

6. If any person, apprehended for having committed any offence against this Act, refuses to discover his name and place of abode to the Justice before whom he is brought, such person shall be immediately delivered over to a constable or other peace officer, and shall by him be conveyed to the common gaol or house of correction for the City, Town, District or County within which the offence has been committed, or in which the offender has been apprehended, there to remain for a space not exceeding one month, or until he makes known his name and place of abode to the said Justice. 20 Vic. cap. 31, sec. 5.

Limitation of suits.

Evidence.

7. The prosecution of every offence punishable under this Act must be commenced within three months next after the commission of the offence, and not otherwise; and the evidence of the party complaining shall be admitted in proof of the offence, and may be accepted as sufficient in the absence of any other evidence. 20 Vic. cap. 41, sec. 6.

Committal of offender for non-payment of penalty or damages.

8. In every case of a conviction under this Act, where the sum awarded for the amount of the damage or injury done, or imposed as a penalty by any such Justice as aforesaid, for any offence contrary to this Act, is not paid either immediately upon or after the conviction, or within such period as such

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Justice at the time of the conviction appoints, such Justice (unless where otherwise specially directed) may commit the offender to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour for any term not exceeding fourteen days, where the amount of the sum awarded or the penalty imposed, or both (as the case may be), together with the costs, do not exceed twenty dollars, and for any term not exceeding two months where the amount with costs exceeds twenty dollars; the commitment to be determinable in each of the cases aforesaid upon payment of the sum or sums awarded and costs. 20 Vic. cap. 31, sec. 7.

Summons of offender in certain cases

9. In all cases in which no other mode of proceeding is specially provided or directed by this Act, and in any case where the person is not conveyed before any Justice by the authority of this Act, any such Justice as aforesaid, upon information or complaint made by any person of any offence against the provisions of this Act, within fourteen days next after the commission of the offence, shall summon the party accused to appear before such Justice, or before any other Justice of the Peace, at a time and place to be by him named, and either on the appearance of the party accused or in default thereof, such Justice or any other Justice, at the time and place appointed for such appearance, may proceed to examine into the matter, and upon due proof made thereof, by voluntary confession of the party, or by oath of a credible witness, shall award, order, give judgment, or convict for the damage or injury, penalty or forfeiture, as the case may be. 20 Vic. cap. 31, sec. 8.

Proceedings on day appointed for his appearance.

Form of conviction provided.

10. In every case where there is a conviction for any offence contrary to this Act, the same shall be drawn or made out according to the form following, or to the effect thereof, or as near thereto as may be:

The form.

County (*or as the case may be*) of —— } Be it remembered, that on the —— day of ——, in the year of our Lord ——, at ——, in the County (*or as the case may be*) of ——, A. B. is convicted before me, J. P., one of Her Majesty's Justices of the Peace for the said County (*or as the case may be*), for that he the said A. B., on the —— day of ——, in the year ——, at ——, in the said — -, did (*here specify the offence*); and I, the said J. P., do adjudge the said A. B., for his said offence, to forfeit and pay the sum of (*here state the penalty actually imposed, or the penalty and also the amount of dam-*

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ages for the injury done, or as the case may be) and also to pay the sum of —— for costs, and in default of immediate payment of the said sums, to be imprisoned in the —— (*and as the case may be*), to be there kept at hard labour for the space of ——, unless the said sums shall be sooner paid: and I direct that the said sum of (*the penalty*) shall be paid as follows, that is to say: one moiety thereof to the —— of the said ——, of ——, to be by —— applied according to ——; and the other moiety thereof to C. D., of ——, the prosecutor (*or as the case may be*); and that the said sum of —— (*the sum for the amount of injury done, if any sum is awarded*) shall be paid to E F. (*or* the said C. D., *as the case may be*); and I order that the said sum of —— for costs shall be paid to the said C. D.

Given under my hand and seal, the day and year first above mentioned. (20 Vic. cap. 31, sec. 9.)

J. P. [L. S.]

Service of summons.

11. A summons issued by any such Justice, requiring the appearance of an offender against any of the provisions of this Act, shall be deemed to be well and sufficiently served, in case either the summons or copy thereof be served personally on such person as aforesaid, or be left at his usual or last known place of abode, in whatever County or place the same may be served or left. 20 Vic. cap. 31, sec. 10.

Penalty on Peace officers refusing to serve any summons or execute any warrant.

12. If any Constable or other Peace officer refuses or neglects to serve or execute any such summons or warrant, every such Constable or Peace officer, being convicted thereof upon the information of any person before a Justice of the Peace, shall forfeit such sum, not exceeding twenty dollars, as the Justice may award, and in default of payment thereof shall be committed by such Justice to the County gaol or house of correction of the City, Town District or County in which such Justice has jurisdiction, there to be kept for a space of time not exceeding one month, unless the penalty be sooner paid. 20 Vic. cap. 31, sec. 11.

Application of penalties.

13. All pecuniary penalties recovered before any Justice of the Peace under this Act, shall be divided, paid and distributed in the following manner, that is to say: one moiety thereof to the Treasurer of the City, Town, Village, Township or Parish in which the offence was committed, to be by such Treasurer applied in repairing streets or roads therein, and the other moiety, with full costs, to the person who informed and prosecuted for the same, or to such other person as to such Justice may seem proper. 20 Vic. cap. 31, sec. 12.

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14. Every sum of money ascertained, determined, adjudged and ordered by any Justice of the Peace under this Act to be paid as the amount of any damage or injury occasioned by the commission of any of the offences hereinbefore mentioned, shall be paid to the person who has sustained such damage or injury. 20 Vic. cap. 31, sec. 12. And of sums awarded for damages.

15. Upon the hearing of any information or complaint under this Act, the person giving or making the information or complaint, or any other person, shall be deemed a competent witness, notwithstanding he may be entitled to part of the pecuniary penalty on the conviction of the offender. 20 Vic. cap. 3, sec. 13. Complainant to be a competent witness.

16. All actions and prosecutions brought against any person for anything done in pursuance or under the authority of this Act, shall be commenced within one month after the fact committed, and not afterwards, and shall be brought and tried in the County or place where the cause of action arose, and not elsewhere. 20 Vic. cap. 31, s. 14; see *post cap.* 99, s. 125. As to suits brought for things done under this Act.

17. Notice in writing of any such action, and specifying the cause thereof, shall be given to the defendant fourteen clear days at least before the commencement of any such action. 20 Vic. cap. 31, sec. 14. When notice to be given, &c.

18. The defendant in such action may plead the general issue, and give this Act and any other matter or thing in evidence at any trial to be had thereupon. 20 Vic. cap. 31, sec. 14. Defendant may plead the general issue.

19. If the cause of action appears to arise from or in respect of any matter or thing done in pursuance and by the authority of this Act, or if any such action be brought after the expiration of one month, or be brought in any other County or place than as aforesaid, or if notice of such action be not given in manner aforesaid, or if tender of sufficient amends be made before such action commenced, or if a sufficient sum of money be by or on behalf of the defendant paid into Court after such action commenced, the jury shall find a verdict, or (if the case be not tried by jury) judgment shall be given, for the defendant. 20 Vic. cap. 31, sec. 14. Tender of amends.

20. If a verdict pass for the defendant, or if the plaintiff becomes non-suit, or discontinues any such action, or if on demurrer or otherwise judgment be given against him, the defendant shall recover his full costs of suit as between attor- As to costs in such suit.

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ney and client, and shall have the like remedy for the same as every defendant may have for costs of suit in other cases at law. 20 Vic. cap. 31, sec. 14.

Costs restrained unless the Judge certifies.

21. And although a verdict be given or judgment be rendered for the plaintiff in any such action, the plaintiff shall not have costs against the defendant unless the Judge or Judges before whom the trial may be had, certifies his or their approbation of the action and of the verdict, if any, obtained thereupon. 20 Vic. cap. 31, sec. 14.

Appeal from conviction under this Act.

22. In case any person considers himself aggrieved by adjudication or conviction made by any Justice of the Peace under the authority of this Act, such party, on giving fourteen days' notice of such appeal, and of the cause and matter thereof to such Justice, may appeal against such adjudication or conviction to the next Quarter Sessions, to be held next after the expiration of the said fourteen days in or for the town, city, riding, district, county or division within which such adjudication or conviction has been made. 20 Vic. cap. 31, sec. 15.

Appeals, how heard, &c.

23. And such Court of Quarter Sessions shall hear and determine the appeal, in the same manner and form as appeals are usually conducted in the General Quarter Sessions in that part of the Province in which the appeal is brought, and shall award to the party appealing against or supporting such adjudication or conviction such costs as to them the said Justices seem reasonable. 20 Vic. cap. 31, sec. 15.

Costs.

Interpretation clause.

24. Wherever in this Act, with reference to any person, cattle, animal, matter or thing, any word or words is or are used, importing the singular number or the masculine or feminine gender only, yet such word or words shall be understood to include several persons or animals as well as one person or animal, and females as well as males, and several matters or things as well as one matter or thing, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction; and where the word "cattle" is used alone in this Act, the same shall be understood and taken for any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep or lamb, or any other cattle or domestic animal. 20 Vic. cap. 31, sec. 16.

Act not to affect Municipal By-laws for the same purpose.

25. Nothing in this Act contained shall be held to repeal any By-laws which may be construed to have reference to any of the provisions, matters and things contained in this Act,

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made by any Municipal Council under and by virtue of the provisions of the Municipal laws of this Province, excepting in so far as the same may be at variance with the provisions of this Act; but such By-laws, so made, shall remain and continue in full force and effect, until legally repealed or amended. 20 Vic. cap. 31, sec. 17.

CONSOLIDATED STATUTES OF UPPER CANADA,

CHAPTER III.

AN ACT RESPECTING THE TERRITORIAL DIVISION OF UPPER CANADA.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

COUNTIES.

Existing organization continued.

1. The Territorial Division of Upper Canada into Counties shall continue as at present, and such Counties respectively shall consist of the several Townships hereinafter mentioned as forming such Counties, including in the said Townships and Counties the Cities, Towns and Incorporated Villages situated within the limits of such Townships and Counties respectively, and including in certain of such Counties other lands as hereinafter mentioned. 14, 15, Vic. cap. 5, sec. 1; *see* 38 G. 3, cap. 5; 2 G. 4, cap. 3; 12 Vic. caps. 11, 78, 79.

Glengarry.

1.—THE COUNTY OF GLENGARRY,

Shall consist of the Townships of—

1. Charlottenburgh,
2. Kenyon,
3. Lancaster, and
4. Lochiel.

Stormont.

2.—THE COUNTY OF STORMONT,

Shall consist of the Townships of—

1. Cornwall,
2. Finch,
3. Osnabruck,
4. Roxborough,

And the Town of .....1. Cornwall.

Prescott.

3.—THE COUNTY OF PRESCOTT,

Shall consist of the Townships of—

1. Alfred,
2. Caledonia,
3. Hawkesbury East,
4. Hawkesbury West,
5. Longueuil,
6. Plantagenet North,
7. Plantagenet South,

And the Town of .....1. L'Orignal.

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Russell. 4.—The County of Russell,

Shall consist of the Townships of—

1. Clarence,
2. Cumberland,
3. Cambridge, and
4. Russell.

Carleton. 5.—The County of Carleton,

Shall consist of the Townships of—

1. Fitzroy,
2. Goulburn,
3. Gower North,
4. Gloucester,
5. Huntley,
6. March,
7. Marlborough,
8. Nepean,
9. Osgoode,
10. Tarbolton,

The City of ..... 1. Ottawa,
And the Village of .... 1. Richmond.

Renfrew. 6.—The County of Renfrew,

Shall consist of the Townships of—

1. Admaston,
2. Alice,
3. North Algona,
4. South Algona,
5. Blithfield,
6. Bagot,
7. Bromley,
8. Buchanan,
9. Brougham,
10. Canonto,
11. Fraser,
12. Grattan,
13. Griffith,
14. Horton,
15. McNab,
16. Miller,
17. Matawatchan,
18. McKay,
19. Pembroke,
20. Petawawa,
21. Ross,
22. Rolph,
23. Stafford,
24. Sebastopol.
25. Westmeath,
26. Wylie, and
27. Wilberforce,

And the Villages of ... 1. Renfrew,
2. Pembroke.

Lanark. 7.—The County of Lanark,

Shall consist of the Townships of—

1. North Burgess,
2. Bathurst,
3. Beckwith,
4. Drummond,
5. Dalhousie,
6. Darling,
7. Elmsley North,
8. Lanark,
9. Lavant,
10. Montague,
11. Pakenham,
12. Ramsay,
13. Sherbrooke North,
14. Sherbrooke South,

The Town of..... 1. Perth,
And the Village of .... 1. Smith's Falls.

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8.—The County of Dundas, Dundas.

Shall consist of the Townships of—

1. Mountain,
2. Matilda,
3. Winchester,
4. Williamsburgh,

And the Village of ....1. Iroquois.

9.—The County of Grenville, Grenville.

Shall consist of the Townships of—

1. Augusta,
2. Edwardsburgh,
3. Gower South,
4. Oxford, (on Rideau,)
5. Wolford,

The Town of.....1. Prescott,
And the Village of ....1. Kemptville.

10.—The County of Leeds, Leeds.

Shall consist of the Townships of—

1. Burgess,
2. Bastard,
3. Front of Escott,
4. North Crosby,
5. South Crosby,
6. Elmsley,
7. Elizabethtown,
8. Kitley,
9. Front of Leeds and Lansdowne,
10. Rear of Leeds and Lansdown,
11. Front of Yonge,
12. Rear of Yonge and Escott,

And the Town of ..... 1. Brockville.

11.—The County of Frontenac, Frontenac.

Shall consist of the Townships of—

1. Barrie,
2. Bedford,
3. Clarendon,
4. Howe Island,
5. Hinchinbrooke,
6. Kennebec,
7. Kingston,
8. Loughborough,
9. Olden,
10. Oso,
11. Portland,
12. Palmerston,
13. Pittsburgh,
14. Storrington,
15. Wolf Island, (including Simcoe Island, Garden Island, Horse-Shoe Island and Mud Island,)

And the City of ..... 1. Kingston.

12.—The County of Addington, Addington.

Shall consist of the Townships of—

1. Anglesea,
2. Amherst Island,
3. Camden,
4. Ernesttown,
5. Kalader, and
6. Sheffield.

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Lennox.

13.—The County of Lennox,

Shall consist of the Townships of—

1. Adolphustown,
2. North Fredericksburgh,
3. South Fredericksburgh,
4. Richmond,

And the Village of ..:.1. Napanee.

Prince Edward.

14.—The County of Prince Edward,

Shall consist of the Townships of—

1. Athol,
2. Ameliasburgh,
3. Hillier,
4. Hallowell,
5. Marysburgh,
6. Sophiasburgh,

And the Town of .....1. Picton.

Hastings.

15.—The County of Hastings,

Shall consist of the Townships of—

1. Bangor,
2. Carlow,
3. Cashel,
4. Dunganan,
5. Elzevir,
6. Farady,
7. Grimsthorpe,
8. Herschel,
9. Huntingdon,
10. Hungerford,
11. Lake,
12. Limerick,
13. McClure,
14. Madoc,
15. Marmora,
16. Mayo,
17. Monteagle,
18. Rawdon,
19. Sidney,
20. Tyendinaga,
21. Thurlow,
22. Tudor,
23. Wicklow,
24. Wollaston,

The Town of ..... 1. Belleville,
And the Village of .... 1. Trenton.

Northumberland.

16.—The County of Northumberland,

Shall consist of the Townships of—

1. Alnwick,
2. Brighton,
3. Cramahe,
4. Haldimand,
5. Hamilton,
6. Murray,
7. Monaghan South,
8. Percy,
9. Seymour,

And the Town of .....1. Cobourg.

Durham.

17.—The County of Durham,

Shall consist of the Townships of—

1. Clarke,
2. Cavan,
3. Cartwright,
4. Darlington,
5. Hope,
6. Manvers,

The Towns of .....1. Port Hope,
2. Bowmanville,
And the Village of ....1. Newcastle.

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18.—The County of Peterborough, Peterboro'.

Shall consist of the Townships of—

1. Asphodel,
2. Anstruther,
3. Belmont,
4. Bruton,
5. Burleigh,
6. Cardiff,
7. Cavendish,
8. Chandos,
9. Douro,
10. Dudley,
11. Dummer,
12. Dysart,
13. Ennismore,
14. Galway,
15. Glamorgan,
16. Guilford,
17. Harburn,
18. Harcourt,
19. Harvey,
20. Minden,
21. Methuen,
22. Monaghan North,
23. Monmouth,
24. Otonabee,
25. Smith,
26. Snowdon,
27. Stanhope,

And the Town of .. ... 1. Peterborough,
Village..... 1. Ashburnham.

19.—The County of Victoria, Victoria.

Shall consist of the Townships of—

1. Anson,
2. Bexley,
3. Carden,
4. Dalton,
5. Digby,
6. Draper,
7. Eldon,
8. Emily,
9. Fenelon,
10. Hindon,
11. Laxton,
12. Longford,
13. Lutterworth,
14. Macaulay,
15. Mariposa,
16. Oakley,
17. Ops,
18. Ryde,
19. Somerville,
20. Verulam,

And the Town of ..... 1. Lindsay.

20.—The County of Simcoe, Simcoe.

Shall consist of the Townships of—

1. Adjala,
2. Balaklava,
3. Essa,
4. Flos,
5. Gwillimbury West,
6. Innisfil,
7. Muskoka,
8. Matchedash,
9. Medonte,
10. Mulmur,
11. Mono,
12. Nottawasaga,
13. Orillia,
14. Oro,
15. Robinson,
16. Sunnidale,
17. Tay,
18. Tiny,
19. Tecumseth,
20. Tossorontio,
21. Vespra, together with (ex-

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clusive of the Townships of Balaklava, Muskoka and Robinson) the tract of land bounded on the east by the line between the late Home and Newcastle Districts prolonged to French River, on the west by Lake Huron, on the North by French River, and on the south by the River Severn and the Township of Rama, and the Islands in Lakes Simcoe and Huron, lying wholly or for the most part opposite to the said County of Simcoe, or any part thereof and contiguous thereto,

And the Towns of.....1. Barrie,
2. Bradford, and
3. Collingwood.

York. 21.—The County of York,

Shall consist of the Townships of—

1. Etobicoke,
2. Gwillimbury East,
3. Gwillimbury North,
4. Georgina,
5. King,
6. Markham,
7. Scarborough,
8. Vaughan,
9. Whitchurch,
10. York,

The City of ..... 1. Toronto,
And the Villages of ... 1. Newmarket,
2. Yorkville.

Peel. 22.—The County of Peel,

Shall consist of the Townships of—

1. Albion,
2. Caledon,
3. Chinguacousy,
4. Toronto,
5. Toronto Gore,

And the Villages of ...1. Brampton,
2. Streetsville.

Ontario. 23.—The County of Ontario,

Shall consist of the Townships of—

1. Brock,
2. Mara,
3. Pickering,
4. Rama,
5. Reach,
6. Scugog,
7. Scott,
8. Thora,
9. Uxbridge,
10. Whitby,
11. East Whitby.

The Town of ..... 1. Whitby,
And the Village of .... 1. Oshawa,

Halton. 24.—The County of Halton,

Shall consist of the Townships of—

1. Esquesing,
2. Nassagaweya,
3. Nelson,
4. Trafalgar,

And the Towns of.....1. Milton, and
2. Oakville.

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25.—The County of Waterloo, Waterloo.

Shall consist of the Townships of—

1. North Dumfries,
2. Waterloo,
3. Wilmot,
4. Woolwich,
5. Wellesley,

And the Town of .....1. Galt,

And the Villages of—

1. Berlin,
2. New Hamburg,
3. Preston, and
4. Waterloo.

26.—The County of Brant, Brant

Shall consist of the Townships of—

1. Brantford,
2. Burford,
3. South Dumfries,
4. Onondaga,
5. Oakland,
6. Tuscarora,

And the Towns of .....1. Brantford, and
2. Paris,

27.—The County of Wellington, Wellington.

Shall consist of the Townships of—

1. Arthur,
2. Amaranth,
3. Erin,
4. Eramosa,
5. Guelph,
6. Garafraxa,
7. Luther,
8. Maryborough,
9. Minto,
10. Nichol,
11. Pilkington,
12. Puslinch,
13. Peel,

The Town of.....1. Guelph,

And the Villages of ...1. Elora, and
2. Fergus.

28.—The County of Grey, Grey.

Shall consist of the Townships of—

1. Artemesia,
2. Bentinck,
3. Collingwood,
4. Derby,
5. Euphrasia,
6. Egremont,
7. Glenelg,
8. Holland,
9. Keppel,
10. Melancthon,
11. Normanby,
12. Osprey,
13. Proton,
14. Sydenham,
15. Saint Vincent,
16. Sullivan,
17. Sarawak, together with (exclusive of the Townships of Keppel and Sarawak) that portion of the Peninsular Tract of land known as the Indian Reserve, and situated between lines drawn northward from the north-east angle of Arran and the north-west angle of Derby,

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until they respectively strike Colpoy's Bay on the east side of the Indian Village, and waters of the Georgian Bay, and the Islands contiguous thereto,

And the Town of .....1. Owen Sound.

Bruce. 29.—The County of Bruce,

Shall consist of the Townships of—

1. Arran,
2. Amable,
3. Albemarle,
4. Brant,
5. Bruce,
6. Culross,
7. Carrick,
8. Eastnor,
9. Elderslie,
10. Greenock,
11. Huron,
12. Kinloss,
13. Kincardine,
14. Lindsay,
15. Saugeen,
16. St. Edmund, together with all that portion of the Peninsular Tract of land known as the Indian Reserve, and not included in the County of Grey, and the Islands in Lake Huron and the Georgian Bay contiguous thereto,

And the Villages of ...1. Walkerton,
2. Southampton.

Huron. 30.—The County of Huron,

Shall consist of the Townships of—

1. Ashfield,
2. Biddulph,
3. Colborne,
4. Grey,
5. Goderich,
6. Hay,
7. Howick,
8. Hullett,
9. McGillivray,
10. McKillop,
11. Morris,
12. Stephen,
13. Stanley,
14. Turnberry,
15. Tuckersmith,
16. Usborne,
17. Wawanosh,

The Town of..... ... 1. Goderich,
And the Village of .... 1. Clinton.

Perth. 31.—The County of Perth,

Shall consist of the Townships of—

1. Blanchard,
2. Downie, including the Gore of Downie,
3. Ellice,
4. Easthope North,
5. Easthope South,
6. Elma,
7. Fullarton,
8. Hibbert,
9. Logan,
10. Mornington,
11. Wallace,

The Town of..... 1. Stratford,
And the Villages of ... 1. Mitchell,
2. St. Mary's

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32.—The County of Lambton, Lambton.

Shall consist of the Townships of—

1. Bosanquet,
2. Brooke,
3. Dawn,
4. Euphemia,
5. Enniskillen,
6. Moore,
7. Plympton,
8. Sarnia,
9. Sombra, including Walpole Island, St. Anne's Island, and the other Islands at the mouth of the River St. Clair,
10. Warwick,

(12 V.c. 79, s. 2.)

And the Town of ..... 1. Port Sarnia.

33.—The County of Kent, Kent.

Shall consist of the Townships of—

1. Camden,
2. Chatham,
3. Dover East,
4. Dover West,
5. Howard,
6. Harwich,
7. Orford,
8. Raleigh,
9. Romney,
10. Tilbury East,
11. Zone,

And the Town of ..... 1. Chatham.

34.—The County of Essex, Essex.

Shall consist of the Townships of—

1. Anderdon,
2. Colchester,
3. Gosfield,
4. Mersea,
5. Maidstone,
6. Malden,
7. Rochester,
8. Sandwich,
9. Tilbury West,

And the Towns of.....1. Amherstburgh,
2. Sandwich, and
3. Windsor.

35.—The County of Elgin, Elgin.

Shall consist of the Townships of—

1. Aldborough,
2. Bayham,
3. Dunwich,
4. Malahide,
5. Southwold,
6. South Dorchester,
7. Yarmouth,

And the Villages of ...1. St. Thomas, and
2. Vienna.

36.—The County of Middlesex, Middlesex.

Shall consist of the Townships of—

1. Adelaide,
2. Carradoc,
3. North Dorchester,
4. Delaware,
5. Ekfrid,
6. Lobo,
7. London,
8. Mosa,

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9. Metcalfe,
10. Nissouri West,
11. West Williams,
12. East Williams,
13. Westminster,

And the City of ..... 1. London,

Norfolk. 37.—The County of Norfolk,

Shall consist of the Townships of—

1. Charlotteville,
2. Houghton,
3. Middleton,
4. Townsend,
5. Windham,
6. Woodhouse,
7. Walsingham, including Long Point,

And the Town of .....1. Simcoe.

Oxford. 38.—The County of Oxford,

Shall consist of the Townships of—

1. Blenheim,
2. Blandford,
3. Dereham,
4. North Norwich,
5. South Norwich,
6. Nissouri East,
7. Oxford North,
8. Oxford East,
9. Oxford West,
10. Zorra East,
11. Zorra West,

The Town of..... 1. Woodstock,
And the Villages of ... 1. Ingersoll,
2. Embro.

Haldimand. 39.—The County of Haldimand

Shall consist of the Townships of—

1. North Cayuga,
2. South Cayuga,
3. Canborough,
4. Dunn,
5. Moulton,
6. Oneida,
7. Rainham,
8. Seneca,
9. Sherbrooke,
10. Walpole,

And the Village of .... 1. Caledonia.

Welland. 40.—The County of Welland

Shall consist of the Townships of—

1. Bertie,
2. Crowland,
3. Humberstone,
4. Pelham,
5. Stamford,
6. Thorold,
7. Willoughby,
8. Wainfleet,

The Town of.....1. Clifton,

And the Villages of—

1. Chippewa,
2. Fort Erie,
3. Merrittsville,
4. Thorold, and
5. Welland.

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41.—The County of Lincoln, Lincoln.

Shall consist of the Townships of—

1. Clinton,
2. Caistor,
3. Grimsby,
4. Grantham,
5. Gainsborough,
6. Louth,
7. Niagara,

And the Towns of—

1. Niagara,
2. Queenston, and
3. St. Catharines.

42.—The County of Wentworth, Wentworth.

Shall consist of the Townships of—

1. Ancaster,
2. Beverly,
3. Binbrook,
4. Barton,
5. Flamborough East,
6. Flamborough West,
7. Glanford,
8. Saltfleet,

The City of .....1. Hamilton,
And the Town of .....1. Dundas.

United Counties.

2. For Municipal, Judicial and all purposes not otherwise provided for by law, the following Counties, already united, shall continue to form Unions of Counties, that is to say: 14, 15 Vic. cap. 5, sec. 2. United Counties.

1. Frontenac, Lennox and Addington;
2. Stormont, Dundas and Glengarry;
3. Leeds and Grenville;
4. Huron and Bruce;
5. Lanark and Renfrew;
6. Northumberland and Durham;
7. Peterboro' and Victoria;
8. Prescott and Russell;
9. York and Peel:

But, for municipal purposes, the Cities of— Cities not to be part of Counties for municipal purposes.

1. Toronto,
2. Hamilton,
3. Kingston,
4. London, and
5. Ottawa,

shall not form parts of the Counties of York, Wentworth, Frontenac, Middlesex and Carleton, within the limits whereof they are respectively situate, but shall, for municipal purposes, be Counties of themselves. 12 Vic. cap. 78.

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COURTS IN UNITED COUNTIES.

Names of United Counties.

And each of such Unions, under the name of the United Counties of —— and —— (*naming them*) shall, for all purposes (except as before excepted) so long as such Counties remain united, have in common, as if one County, all Courts, Offices and Institutions established by Law, pertaining to Counties.

Courts to be held as formerly.

3. The Courts of Assize and Nisi Prius, of Oyer and Terminer and Gaol Delivery, of Quarter Sessions of the Peace, County Courts Surrogate Courts and Division Courts, shall be held in and for the said County and United Counties according to Law and the Statutes relating to such Courts respectively.

COURT HOUSES—GAOLS—SCHOOL HOUSES.

The property officers, &c., continued.

4. The Court-houses and Gaols, County Grammar School-houses, and all other property, real and personal, and all the offices and officers of the Counties, and United Counties, existing at the time this Act comes into force, shall belong to and continue in the Counties and United Counties respectively of the like names under this Act, and, as respects such Unions, until the dissolution thereof under the provisions of the Act for the "Regulation of Municipal Institutions in Upper Canada." 12 Vic. cap. 78, sec. 37.

TOWNSHIPS BOUNDED BY CERTAIN LAKES AND RIVERS.

Limits of townships bounded by certain Lakes and Rivers.

5. The limits of all the Townships lying on the River St. Lawrence, Lake Ontario, the River Niagara, Lake Erie, the River Detroit, Lake St. Clair and River St. Clair and Lake Huron, shall extend to the boundary of the Province in such lake or river, in prolongation of the outlines of each Township respectively; and unless herein otherwise provided, such Townships shall also include all the Islands, the whole or the greater part of which are comprised within the said outlines so prolonged. 14 & 15 Vic. cap. 5, sec. 11.

TOWNSHIPS ON THE OTTAWA.

Limits of townships on the Ottawa.

6. The limits of the Townships lying on the River Ottawa shall in like manner extend to the middle of the main channel thereof, and such Townships shall also include all the Islands not herein otherwise provided for, the whole or the greater part of which are comprised within the said outlines so prolonged; excepting always the Islands in front of the Seigniory of La Petite Nation and the Grand Calumet, and Grand and

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Little Allumettes Islands, which belong to Lower Canada, the middle of the main channel between the last named Islands, and the southerly bank of the Ottawa River, being the boundary between Upper and Lower Canada.

TOWNSHIPS ON LAKE ST. FRANCIS AND RIVER ST. LAWRENCE.

7. The limits of the Townships in the County of Glengarry shall in like manner extend to the middle of Lake St. Francis, and to the middle of the main channel of the River St. Lawrence, and unless herein otherwise provided, shall also include all the Islands, the whole or the greater part of which are comprised within the outlines of the said Townships so prolonged. In Glengarry

TOWNSHIPS ON THE BAY OF QUINTE AND ON OTHER BAYS, LAKES AND RIVERS.

8. The limits of the Townships on the Bay of Quinté, the River Trent and its Lakes, Lake Simcoe, the River Severn, the River Rideau and its Lakes, the River Thames, the Grand River, and any other rivers, lakes and bays not hereinbefore mentioned, shall in like manner extend to the middle of the said lakes and bays, and to the middle of the main channels of the said rivers respectively, and unless herein otherwise provided, shall also include all the Islands, the whole or the greater part of which are comprised within the outlines of the said Townships so prolonged. On Bay of Quinté, and on other Bays, Lakes and Rivers.

CERTAIN ISLANDS EXCEPTED.

9. The last four preceding Sections shall not extend to any Islands or parts of Islands which are Townships by themselves, or which have been expressly included in other Townships in the original surveys and plans thereof remaining of record in the office of the Commissioner of Crown Lands, or by Statute, but the same shall remain parts of such Townships respectively. The last four sections not to include Islands being townships of themselves.

NEW TOWNSHIPS.

10. All tracts of land in Upper Canada not already included in any Township, from time to time by Proclamation erected into Townships, shall be subject to and have the benefit of all enactments and provisions of law to which other Townships are subject or entitled by the Consolidated Statutes of Upper Canada or of Canada, unless clearly inapplicable to such new Township. 8 Vic. cap. 7, sec. 2. New townships.

11 Subject to the provisions of the Act respecting the Municipal Institutions of Upper Canada, the Governor may, by Order in Council, issue a Proclamation under the Great The Governor may constitute townships,

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Counties and unions, &c.

Seal of the Province, to have force of law from a day to be named therein, and thereby constitute Townships and Counties and Unions of Townships and Counties in those parts of Upper Canada in which Townships and Counties, or Unions thereof, have not been constituted, and may fix the metes and boundaries thereof. *See* 22 Vic. cap. 99, sec. 27.

GORES OF LAND.

The Governor may annex gores.

12. The Governor may also, in like manner, annex any gore, or small tract of land not included in the original survey or forming part of any Township, and not of sufficient extent to form a Township of itself, to any Township, or partly to each of more Townships than one, to which it may be adjacent; and such gore or tract shall thenceforward, for all purposes, form part of such Township or Townships. *See* Municipal Act, *and* 12 Vic. cap. 11, sec. 2.

CON. STATS. U. C.—CHAPTER XLVI.

AN ACT RELATING TO FERRIES.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

No license to be granted, &c.

1. No license of Ferry in Upper Canada shall in future be granted to any person or body corporate beyond the limits thereof and all grants of Ferry on the frontier line of Upper Canada, shall be issued to the Municipality within the limits of which such Ferry exists, and in case of the establishment of any additional Ferry on such frontier, then to the Municipality in which such additional Ferry is established, and shall be so construed as to extend and apply to all such Ferries on the Provincial frontier, the circumstances of which do not permit or warrant the peremptory use of Steamboats. 20 Vic. cap. 7, sec. 5; 22 Vic. cap 41 (1859.)

License to be issued by the Governor under the Great Seal.

2. Every grant or license of Ferry shall be issued by the Governor under the Great Seal, and under the foregoing section may be granted for any period not exceeding fifty years. 8 Vic. cap. 50, secs. 2, 3; 20 Vic. cap. 7, secs. 1, 2, 8.

Ferries to be leased by public competition and only for a limited time.

3. Except as herein otherwise provided, no Ferry in Upper Canada shall hereafter be leased by the Crown, nor shall the lease thereof be renewed, or any license by the Crown to act as a Ferryman thereat be granted, except by public competi-

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tion, and after notice of the time and place at which tenders will be received for the lease or license for such Ferry, inserted at least four times in the course of four weeks in the *Canada Gazette*, and in one or more of the newspapers published in the County in which the Ferry may be situate, and to parties giving such security as the Governor-in-Council may require; nor shall any such Ferry be leased or the license thereof granted for a longer term than seven years at any one time. 9 Vic. cap. 9, sec. 2.

Limits of Ferries.

4. In every case, except in the case of Municipalities as hereinafter provided, where the limits to which the exclusive privilege of any Ferry extends are not already defined, such exclusive privilege shall not be granted for any greater distance than one mile and a half on each side of the point at which the Ferry is usually kept, but nothing herein contained shall invalidate or infringe upon any existing grant or right of Ferry. 8 Vic. cap. 50, secs. 5, 3.

Governor may grant a license to have a ferry communication between two Municipalities.

5. In all cases where a ferry is required over any stream or other water within Upper Canada, and the two shores of such stream or other water are in different Municipalities, such Municipalities not being in the same County, the Governor-in-Council may grant a license to either of such Municipalities exclusively, or to both conjointly, as may be most conducive to the public interest. 20 Vic. cap. 7, sec. 1.

License to confer a right, &c.

6. Such license shall confer a right on the Municipality or Municipalities to establish a ferry from shore to shore on such stream or other water, and with such limit and extent as may appear advisable to the Governor-in-Council, and be expressed in such license. 20 Vic. cap. 7, sec. 1.

Condition of license as to steam.

7. Such license shall be upon condition that the craft to be used for the purpose of such ferry shall be propelled by steam, and be of such dimensions, and the engine thereof be of such power, as the Governor-in-Council may direct; and upon such further conditions as the Governor-in-Council may think fit and express in such license. 20 Vic. cap. 7, sec. 1.

Municipalities may sub-let ferries.

8. The Council of the Municipality to which Municipality any such license may be issued, may pass By-laws, not contravening the terms of the license, declaring their determination to sub-let the said ferry, and may sub-let the same for the price, and upon the terms, and to the parties, and on the conditions, and at the rates of ferriage to be paid, which the said Council may deem best. 20 Vic. cap. 7, sec. 3.

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Incorporated Cities, Towns and Villages to have the preference as to such license.

9. In all cases where the one shore of such stream or other water is within the limits of a City, Town, or incorporated Village, and the other shore thereof in a Township or rural Municipality, the license shall be issued to the City, Town or incorporated Village; but in case the rural Municipality opposite to any such City, Town or incorporated Village, be an Island, then the license shall be granted to the Island Municipality. 20 Vic. cap. 7, sec. 4.

Penalty for interfering with licensed ferryman.

10. If any person unlawfully interferes with the rights of any licensed ferryman, by taking, carrying and conveying, at any such ferry, across the river or stream on which the same is situate, any person, cattle, carriage or wares, in any boat, vessel or other craft, for hire, gain, reward, profit, or hope thereof, or unlawfully does any other act or thing to lessen the tolls and profits of any lessee of the Crown of any such ferry, such offender, upon conviction thereof before a Justice of the Peace, shall forfeit and pay such sum of money not exceeding twenty dollars, as the Justice may direct, which sum shall be paid to the party aggrieved, except where he has been examined in proof of the offence, in which case the money shall be applied and accounted for in the same manner as any penalty imposed for a breach of the peace. 8 Vic. cap. 50, sec. 1.

Parties may keep boats for their own use.

11. Any person may keep at any such ferry a boat, vessel, or other craft, for his own private use, or may use, for the accommodation of himself or of his employer, his own or his employer's boat, vessel or craft, to cross the river or stream on which the ferry is situate; but such privilege shall in no wise be used to take, carry or convey any other persons or property for hire, gain, reward or profit, or hope thereof, or directly or indirectly to enable any such other persons to evade the payment of tolls at such ferry. 9 Vic. cap. 9, sec. 1; 8 Vic. cap. 50, sec. 1.

Offender to be committed if penalty be not paid.

12. In case the sum forfeited be not paid immediately after conviction, the convicting Justice may commit the offender to the common gaol of the County, there to be imprisoned for a term not exceeding two months, unless the forfeiture and the costs be sooner paid. 8 Vic. cap. 50, sec. 2.

Aggrieved party may appeal.

13. Any party aggrieved by any conviction or decision under this Act, may appeal from such conviction or decision, in the manner and under the conditions and provisions of the Act respecting appeals in cases of summary conviction. 8 Vic. cap. 50, sec. 4.

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14. On the trial of any offender against this Act, every license heretofore issued, or issued under this Act, shall be *prima facie* evidence of title to the ferry. 8 Vic. c. 50, s. 3. Title to the ferry.

15. The Council of every County, City, and Town separated from the County under the Act respecting the Municipal Institutions of Upper Canada, may pass By-laws for regulating ferries between any two places in the Municipality, and establishing the rates of ferriage to be taken thereon; but no such By-law shall have effect until assented to by the Governor-in-Council; and until the Council of the County, City or Town separated as aforesaid pass a By-law regulating such ferries, and in the cases of ferries not between two places in the same Municipality, the Governor, by order in Council, may from time to time regulate such ferries respectively, and establish the rates to be taken thereon, subject to the provisions of this Act. 22 Vic. cap. 99, s. 277, No. 4, and s. 278. Municipal Councils may pass By-laws regulating ferries in certain places.

CON. STAT. U. C.—CHAPTER XLVII.

AN ACT RESPECTING RIVERS AND STREAMS.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. Except in the case of round or squared timber, or of trees, masts, staves, deals, boards or other sawed or manufactured lumber or saw logs, prepared for transportation to a market, every person and every employer of such person, who cuts and fells any trees into the Grand River, the River Thames, River Nith, River Speed, Otter Creek, the River Credit, the River Otonabee from Sturgeon Lake to Rice Lake, the River Scugog, the River Trent from Rice Lake to the Bay of Quinte, Crow River, the Rivers Gananoque, Rideau, Petite Nation, Tay, Mississippi, Bonnechere, Madawaska and Goodwood, in Upper Canada, or upon such parts of the banks thereof as are usually overflowed in the autumn or spring of the year by the rising of the water of the said rivers or creek, and who does not lop off the branches of such trees and cut up the trunks thereof into lengths of not more than eighteen feet, before they are allowed to be floated or cast into the said rivers or streams, shall for every such offence forfeit and pay a penalty not exceeding ten dollars. 3 Wm. IV. cap. 28, s. 1; 2 Vic. cap. 16, secs. 1, 4. Condition on which timber may be cut on the banks of rivers and floated thereon.

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Penalty on persons obstructing rivers and rivulets.

2. In case any person throws, or in case any owner or occupier of a mill suffers or permits to be thrown, into any river, rivulet or water-course in Upper Canada, excepting those hereinafter mentioned, any slabs, bark, waste stuff or other refuse of any saw-mill (except saw-dust), or any stumps, roots, shrubs, tan-bark or waste wood, or leached ashes: or in case any person fells or causes to be felled in or across any such river, rivulet or water-course, any timber or growing or standing trees, and allows the same to remain in or across such river, rivulet or water-course, he shall incur a penalty not exceeding twenty dollars, and not less than twenty cents, for each day during which such obstruction remains in, over or across such river, rivulet or watercourse, over and above all damages arising therefrom. 10, 11 Vic. cap. 20, sec. 1; 7 Vic. cap. 36, sec. 1; 2 Vic. cap. 16, sec. 2; 22 Vic. cap. 99, sec. 270.

Act not to extend to dams, weirs or trees used as bridges.

3. This Act shall not apply to any dam, weir or bridge erected in or over any such river, rivulet or water-course, or to anything done *bonâ fide* in or for erecting the same, or to any tree cut down or felled across any such river, rivulet or water-course, for the purpose of being used as a bridge from one side thereof to the other; provided such tree does not impede the flow of water or the passing of rafts. 10, 11 Vic. cap. 20, sec. 1.

Rivers where salmon, pickerel, black bass, or perch do not abound not included.

4. This Act shall not extend to the River St. Lawrence, nor to the River Ottawa, nor to any river or rivulet wherein salmon, pickerel, black bass, or perch, do not abound. 14, 15 Vic. cap. 123.

As to obstructions not wilful.

5. No such obstruction, happening without the wilful default of any party, or in the *bona fide* exercise of his rights, shall subject him to any fine or forfeiture unless upon default to remove the obstruction after notice and reasonable time afforded for that purpose. 10, 11 Vic. cap. 20, sec. 1.

How fines to be recovered.

6. All fines, penalties, forfeitures and damages under this Act, when not together exceeding twenty dollars, may respectively, upon the oath of one credible witness, be recovered with costs, in a summary way, in the manner provided by the Act of the Province of Canada, relative to malicious injuries to property,* before any one or more of the Justices of the

* Reference should have been made to the Act respecting the duties of Justices of the Peace out of Sessions, in relation to summary convictions and orders, which virtually superseded 4, 5 Vic. cap. 26, sec. 30.

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Peace for the County in which the offence has been committed; and, unless the conviction be appealed from, if the fine or penalty and damages (as the case may be), together with the costs, be not paid at the time stated in the conviction, the convicting Justice or Justices, or one of them, when more than one, shall issue his or their warrant of distress to levy the same out of the goods and chattels of the offender; and in case there be not sufficient goods and chattels found to satisfy the same, and in case the offender does not otherwise satisfy the amount within three days after conviction, then such Justice or Justices (as the case may be) shall, by warrant under hand and seal, commit the offender to the common gaol of the County in which he has been convicted, for the term of ten days in case the conviction be under the first section of this Act, or thirty days in case the conviction be under the second section of this Act, unless the fine, penalty or forfeiture and damages (as the case may be) and costs, be sooner paid. 3 Wm. IV. cap. 28, sec. 2; 10, 11 Vic. cap. 20, sec. 1; see 4, 5 Vic. cap. 26, sec. 30; 7 Vic. cap. 36, secs. 1, 2, 4.

Party aggrieved may appeal.

7. Any party aggrieved by any conviction or decision under this Act, may appeal in the manner and under the conditions and provisions of the Act of the Province of Canada respecting appeals in cases of summary conviction. 7 Vic. cap. 36, s. 2.

Appropriation of penalties.

8. Of pecuniary penalties levied under this Act, one-third shall go to the informer, and the other two-thirds shall be paid to the Treasurer of the Municipality in which the offence was committed, and shall be expended in improving the public highways therein. 3 Wm. IV. cap. 28, sec. 3; 2 Vic. cap. 16, sec. 3.

Assessed damages how to be applied.

9. In case of damages to private property, arising out of a violation of this Act, such damages may, at the request of the party aggrieved, be assessed by the convicting Justice or Justices, and included in the conviction, when such damages, together with the fine or penalty imposed, do not together exceed twenty dollars; and in case damages be assessed, the same shall be paid to the party aggrieved, except in cases where he has been examined in proof of the offence, in which case the same shall be applied to the improvement of the public highways in the Municipality, as above provided. 7 Vic. cap. 36, sec. 3.

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CON. STAT. U. C.—CHAPTER XLVIII.

AN ACT RESPECTING MILLS AND MILL DAMS.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Tolls.

No greater proportion to be taken for grinding and bolting grain than one twelfth.

1. No owner or occupier of a mill, nor any person employed by him, shall demand or take as toll a greater proportion of any grain brought to him to be ground and bolted, than one-twelfth part thereof, for grinding and bolting the same, under a penalty of forty dollars for every such offence; one moiety thereof to be paid to Her Majesty for the public uses of the Province, and the other moiety to any person who may sue for the same in any Court of Record. 32 Geo. III. cap. 7, secs. 1, 2.

Bags to be Marked.

Bags must be marked.

2. No owner or occupier of a mill shall be bound to receive or be chargeable with the loss of any bag of grain or flour, unless such bag be marked with the initial letters of the Christian and surname of the owner of the grain, or with some mark distinguishing the bag, which mark of distinction shall be previously communicated and made known to the said owner or occupier of the mill, or his servant usually attending the same. 32 Geo. III. cap. 7, sec. 3.

Mill Dams.

Owners or occupiers of mills to construct aprons to their dams.

3. Subject to the provisions of the Fishery Act of the Province of Canada, in case a mill dam be legally erected on any stream, down which stream lumber is usually brought, or in which stream salmon or pickerel abound, the owner or occupier of such dam shall construct and maintain a good and sufficient apron thereto, not less than eighteen feet wide by an inclined plane of twenty-four feet eight inches to a perpendicular of six feet, and so in proportion to the height where the width of the stream will admit of it; and in case such stream or dam be less than fifteen feet wide, the whole dam shall be aproned in like manner with the same inclined plane; and every such owner or occupant who neglects to construct or maintain such apron, shall for such offence forfeit and pay yearly the sum of one hundred dollars; one moiety thereof to Her Majesty for the public uses of the Province, and the other moiety to any person who may sue for the same in any Court of Record. 9 Geo. IV. cap. 4, secs. 1, 2; 22 Vic. cap. 86, sec. 27.

Penalty and its appropriation.

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MILL DAMS, CONSTRUCTION OF, AND THE PASSAGE OF TIMBER, &c.

Apron or slide to admit passing of logs, &c.

4. Every owner or occupier of a mill-dam at which an apron or slide is required to be constructed as aforesaid, shall, if necessary, alter, or, if not already built, shall construct such apron or slide so as to afford depth of water sufficient to admit of the passage over such apron or slide of such saw-logs, lumber and timber as are usually floated down the streams or rivers whereon such dams are erected; but any owner or occupier of any such dam may construct a waste-gate, or put up brackets and slash-boards in, upon and across the apron, for the purposes of preventing any unnecessary waste of water therefrom, and may keep the same closed when no person is ready and requires to pass or float any craft, lumber or saw-logs over such apron or slide. 12 Vic. cap. 87, sec. 1.

Waste-gates, Slash-boards.

Owners not obliged to remove brackets, until, &c.

5. The owner or occupier of any such dam shall not be bound to remove the brackets or slash-boards across the apron thereof until the raft, craft, lumber or saw-logs required to be passed are ready to pass, and have for that purpose gained the main channel of the stream. 12 Vic. cap. 87, sec. 1.

ON SMALL STREAMS.

When aprons and slides, mentioned in secs. 3 & 4, not required in small streams.

6. No persons shall be required to build such aprons or slides as mentioned in the third and fourth sections, on small streams, unless required for the purposes of rafting or floating down lumber and saw-logs as aforesaid 12 Vic. cap. 87, s. 1.

PENALTIES.

Penalty on owner of dam refusing to comply with the requirements of this Act.

7. Every owner or occupier of any dam mentioned in the fourth section of this Act, who (if not already made and constructed) neglects or refuses to make and construct and keep in repair an apron of the description therein mentioned, shall pay a penalty of two dollars per day for every day of such neglect, and such penalty shall be recoverable before any two Justices of the Peace for the County in which the offence has been committed, on the oath of two credible witnesses, and if not paid shall be levied by distress and sale of the goods and chattels of the offender, by a warrant under the hand and seal of such Justices, or one of them, and shall be paid to the Treasurer of the Municipal Corporation having jurisdiction in the locality where such dam is erected for the general uses of the Municipality. 12 Vic. cap. 87, sec. 3.

How enforced.

MILL DAMS IN SPECIFIED PLACES.

1.—IN THE COUNTY OF HURON.

Dams and weirs in the

8. Subject to the provisions of the Fishery Act, the owner or occupier of every dam or weir erected on any river or stream

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County of Huron.

in any of the Townships of Williams, McGillivray, Stephen, Hay, Stanley, Goderich, Colborne, Hullet, McKillop, Tuckersmith, Hibbert, Logan, Fullarton, Usborne, Biddulph, Blanchard, Downie including the Gore of Ellice, Northeast Hope and Southeast Hope, or any other tracts of land which on the twenty-ninth day of March, one thousand eight hundred and forty-five, constituted the then District of Huron, shall, if the same has not been already done, construct and maintain, and, if constructed, shall maintain and keep in repair, a good and sufficient apron to such dam or weir, at least twenty-eight feet wide (if the dam or weir be of greater width, and if not, then of the same width as the dam or weir), and at least eight feet in length for every foot rise of such dam or weir, under a penalty of one dollar for each day during which the requirements of this section are not complied with; and such penalty shall be recoverable before any two Justices of the Peace for the County in which the offence has been committed, on the oath of one credible witness; and if not paid, may be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand and seal of such Justices or either of them; one moiety of such penalty shall belong to Her Majesty, for the public uses of the Province, and the other moiety to the prosecutor. 4 Wm. IV. cap. 55, sec. 1; 8 Vic. cap. 66; 1 Vic. cap. 26.

2.—On the River Moira.

On the river Moira.

9. Subject to the provisions of the "Fishery Act," the owner or occupier of any dam on the River Moira or its tributaries, in the County of Hastings, on which lumber is floated to market, shall construct and maintain, and if constructed, shall maintain and keep in repair a good and sufficient apron to such dam, at least thirty-two feet in width (if the dam be of that or of greater width, and if not, then of the width of the dam) and at least five feet in length for every foot rise of such dam; and the height of the dam at the place where the apron is constructed, shall be at least two feet lower than the top of the said dam at any other place (unless it occupy the whole width thereof as aforesaid); but if the rise of the dam be less than four feet, the height of the dam at the place where the apron is constructed shall not exceed one half its height at any other place. 11 Vic. cap. 10, sec. 2.

Penalty for contravention.

10. Every such apron shall be constructed on the main channel of the stream, and its highest part shall be one foot below the level of the dam at the place where it joins the same, under a penalty of twenty-five cents for each day the require-

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ments of this and the next preceding section are not complied with. 11 Vic. cap. 10, sec. 2.

How recovered and enforced.

11. The said penalty, on the complaint of any person engaged in the lumber trade upon the said river or any tributary thereof, may be recovered before any two Justices of the Peace for the County in which the offence has been committed, upon the oath of one credible witness other than the informer, one half of which penalty shall belong to Her Majesty, for the public uses of the Province, and the other moiety to the prosecutor; and if upon conviction such penalty be not forthwith paid, it shall, by warrant under the hand and seal of such Justices, or of one of them, be levied by distress and sale of the goods of the offender. 11 Vic. cap. 10, sec. 2.

Owner not obliged to alter the apron if constructed before a certain period until renewed.

12 The ninth section of this Act shall not oblige the owner or occupier of any dam on the River Moira to alter the apron thereof, if constructed before the twenty-third day of March, one thousand eight hundred and forty eight, until the renewal of such apron. 11 Vic. cap. 10, sec. 2.

8.—On the River Otonabee.

Special provisions with regard to the river Otonabee.

13. No apron to any mill-dam on the River Otonabee shall be less than thirty-two feet wide by an inclined plane of five feet to a perpendicular of one foot, and so in proportion to the height of the dam; and side pieces of at least one foot in height shall be fixed on the outside of every such apron, to confine the water and prevent the timber from falling off at the sides. 12 Vic. cap. 87, sec. 2.

As to Penalties when Dams injured by Floods.

If aprons injured by floods, &c., penalties suspended for a reasonable time.

14. In case any apron be carried away, destroyed or damaged by flood or otherwise, the owner or occupier of the dam to which the same was attached shall not be liable to any such penalty as aforesaid, if such apron be repaired or reconstructed in conformity to this Act, as soon as the state of the stream safely permits. 12 Vic. cap. 87, sec. 4; 11 Vic. cap. 10, sec. 2.

Timber, &c., may be floated down Streams at certain Seasons.

All persons may float saw-logs, &c., down streams.

15. All persons may float saw-logs and other timber, rafts and craft down all streams in Upper Canada during the spring, summer and autumn freshets, and no person shall, by felling trees or placing any other obstruction in or across any such stream, prevent the passage thereof. 12 Vic. cap. 87, sec. 5.

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Persons using streams not to injure dams, &c.

16. In case there be a convenient apron, slide, gate, lock or opening in any such dam or other structure made for the passage of saw-logs and other timber, rafts and crafts authorised to be floated down such stream as aforesaid, no person using any such stream in manner and for the purposes aforesaid, shall alter, injure or destroy any such dam or other useful erection in or upon the bed of or across the stream, or do any unnecessary damage thereto or on the banks thereof. 12 Vic., cap. 87, sec. 5.

PROTECTION IN CERTAIN CASES OF MILLS OVERFLOWING ADJACENT LANDS.

When grantee of Crown not to recover damages for overflow of his lands.

17. In case, in any action brought against the proprietor or occupier of a mill, for the overflowing of or injury to land, caused by the erection or continuation of a dam for the purposes of such mill, it appears that the overflowing or other injury was caused by the erection or continuation of a dam which was built before the purchase of such land, by the grantee of the Crown and before the grant thereof to him, and that such purchaser obtained a reduction in the price of such land, or was otherwise indemnified in consequence of its being so overflowed or otherwise injured, then the jury on the trial of such action may take such facts into their consideration, and, if they think it just and equitable, may, in consequence thereof, find a verdict for the defendant. 13, 14 Vic., cap. 75, sec. 1.

Defendant may plead general issue, &c.

18. In any such action the defendant may plead the general issue, and under such plea, on entering a note of this Act in the margin thereof, may avail himself of this Act and of the matters of defence herein given. 13, 14 Vic., cap. 75, sec. 2.

CON. STAT. U. C.—CHAPTER LVI.

AN ACT TO REGULATE TRAVELLING ON PUBLIC HIGHWAYS.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

WHEELED CARRIAGES OR SLEIGHS MEETING.

Carriages meeting to drive to the right, giving half the road.

1. In case any person travelling or being upon any highway in charge of a vehicle drawn by one or more horses, or one or more other animals, meets another vehicle drawn as aforesaid,

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he shall turn out to the right from the centre of the road, allowing to the vehicle so met one half of the road. 18 Vic. cap. 138, sec. 2.

2. In case any person travelling or being upon any highway in charge of a vehicle as aforesaid, or on horseback, be overtaken by any vehicle or horseman travelling at a greater speed, the person so overtaken shall quietly turn out to the right, and allow the said vehicle or horseman to pass. 18 Vic. cap. 138, sec. 3. Carriages overtaken to turn to the right.

3 In the case of one vehicle being met or overtaken by another, if by reason of the extreme weight of the load on either of the vehicles so meeting or on the vehicle so overtaken, the driver finds it impracticable to turn out as aforesaid, he shall immediately stop, and, if necessary for the safety of the other vehicle and if required so to do, he shall assist the person in charge thereof to pass without damage. If the weight of one of them prevents this.

PENALTY IF DRIVER INTOXICATED.

4. In case any person in charge of a vehicle, or of a horse or other animal used as the means of conveyance travelling or being on any highway as aforesaid, be through drunkenness unable to drive or ride the same with safety to other persons travelling on or being upon the highway, he shall incur the penalties imposed by this Act. 18 Vic. cap. 138, sec. 4. Penalty on drivers, &c., too drunk to manage their horses.

RACING PROHIBITED.

5. No person shall race with or drive furiously any horse or other animal, or shout or use any blasphemous or indecent language upon any highway. 18 Vic. cap. 138, sec. 5. Racing on highways forbidden.

6. In case any person so races or drives, or shouts or uses blasphemous or indecent language, he shall incur the penalties imposed by this Act. 18 Vic. cap. 138, sec. 5. Swearing on highways forbidden.

SLEIGH BELLS.

7. Every person travelling upon any highway with a sleigh, sled or cariole, drawn by horse or mule, shall have at least two bells attached to the harness. 18 Vic. cap. 138, sec. 7. Sleigh horses to have bells.

BRIDGES.

8. Every person who has the superintendence and management of any bridge exceeding thirty feet in length, shall cause to be put up at each end thereof, conspicuously placed, a notice legibly printed in the following form : Notice to be posted at the bridges to which this Act applies.

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"Any person or persons riding or driving on or over this "bridge at a faster rate than a walk, will on conviction thereof, "be subject to a fine, as provided by law." 8 Vic. cap. 44, sec. 3.

Penalty on persons defacing such notice.

9. In case any person injures or in any way interferes with such notice, he shall incur a fine of not less than one nor more than eight dollars, to be recovered in the same manner as other penalties imposed by this Act. 8 Vic. cap. 44, sec. 4.

Fast driving over bridges forbidden.

10. If, while such notice continues up, any person rides or drives a horse or other beast of burden, over such bridge at a pace faster than a walk, he shall incur the penalties imposed by this Act. 18 Vic. cap. 138, sec. 6.

PENALTIES.

Penalty for contravening this Act,

11. In cases not otherwise specially provided for, if any person contravenes this Act, and such contravention be duly proved by the oath of one credible witness, before any Justice of the Peace having jurisdiction within the locality where the offence has been committed, the offender shall incur a penalty of not less than one dollar nor more that twenty dollars, in the discretion of such Justice, with costs.

To be enforced by distress

12. If not paid forthwith, the penalty and costs shall be levied by distress and sale of the goods and chattels of the offender, under a warrant signed and sealed by the convicting Justice, and the overplus, if any, after deducting the penalty and costs and charges of sale, shall be returned, on demand, to the owner of such goods and chattels.

Or by imprisonment.

13. In default of payment or distress, the offender shall, by warrant signed and sealed as aforesaid, be imprisoned in the common gaol for a period of not less than one day nor more than twenty days, at the discretion of the Justice, unless such fine, costs and charges be sooner paid.

Not to bar action of damages.

14. No such fine or imprisonment shall be a bar to the recovery of damages by the injured party before any Court of competent jurisdiction. 18 Vic. cap. 138, sec. 8.

Application of penalties.

15. Every fine collected under this Act shall be paid to the Chamberlain or Treasurer of the local Municipality or place in which the offence was committed, and shall be applied to the general purposes thereof. 18 Vic. cap. 138, sec. 9.

Appeal.

16. Any conviction under this Act may be appealed in the manner provided in the Act respecting appeals in cases of summary convictions. 18 Vic. cap. 138, sec. 10.

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CON. STAT. U. C.—CHAPTER LVII

AN ACT RESPECTING LINE FENCES AND WATER-COURSES.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Each party to make and repair a portion of the division fence.

1. Each of the parties occupying adjoining tracts of land shall make, keep up and repair a just proportion of the division or line fence on the line dividing such tracts, and equally on either side thereof. 8 Vic. cap. 20, sec. 2.

What constitutes a lawful fence.

2. Any fence coming within the meaning of a lawful fence in any By-law of the Municipal Council in that behalf, is to be considered a lawful fence; and when no such By-law exists, any Fence-viewers, when called upon, are to exercise their own judgment, and decide what they consider to be a lawful fence. 8 Vic. cap. 20, sec. 3.

Division fences not to be removed without notice.

3. The owner of the whole or part of a division or line fence, which forms part of the fence inclosing the occupied or improved land of another person, shall not take down or remove any part of such fence. 8 Vic. cap. 20, sec. 9.

Twelve months previous.

1. Without giving at least twelve months previous notice of his intention to the owner or occupier of such adjacent enclosure. 8 Vic. cap. 20, sec. 9.

Nor unless the adjoining occupant refuses to pay therefor.

2. Nor unless such last mentioned owner or occupier, after demand made upon him in writing by the owner of such fence, refuses to pay therefor a sum to be determined, as provided in the next sub-section. 8 Vic. cap. 20, sec. 9.

Nor if he pays what three Fence-viewers award.

3. Nor, if such owner or occupier will pay to the owner of such fence, or any part thereof, such sum as three Fence-viewers, or a majority of them in writing, determine to be the reasonable value thereof. 8 Vic. cap. 20, secs. 8, 9.

When vacant land is inclosed, the owner to pay a share of any adjoining division fence.

4. When any land which has laid uninclosed or in common, is afterwards inclosed or improved, the occupier shall pay to the owner of the division or line fence standing upon the divisional line between such land and the enclosure of any other occupant or proprietor, a just proportion of the value thereof. 8 Vic. cap. 20, sec. 8.

Water fences to be made in equal proportions.

5. When a water-fence or a fence running into the water is necessary, the same is also to be made in equal parts, unless the parties otherwise agree. 8 Vic. cap. 20, sec. 10.

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When lands are divided by a river or creek.

6. When lands belonging to or occupied by different persons, are divided from each other by any river, brook, pond or creek, which of itself is not a sufficient barrier, and it is impracticable to fence upon the true boundary line, the fence shall be set up on one side of the river, brook, pond or creek, or partly on one side and partly on the other, as may be just. 8 Vic. cap. 20, sec. 11.

When ditches or water courses may be opened.

7. When it is the joint interest of parties resident, to open a ditch or water course for the purpose of letting off suplus water from swamps or low miry lands, in order to enable the owners or occupiers thereof to cultivate or improve the same, such several parties shall open a just and fair proportion of such ditch or water course according to their several interests. 8 Vic. cap. 20, sec. 12. *See* 22 Vic. cap. 99, sec. 271.

Three Fence-viewers to decide all disputes.

8. Three Fence-viewers of the Municipality, or a majority of them, may decide all disputes between the owners or occupants of adjoining lands, or lands so divided or alleged to be divided as aforesaid, in regard to their respective rights and liabilities under this Act, and also all disputes respecting the opening, making or paying for ditches and water courses, under this Act 8 Vic. cap. 20, secs. 2, 11.

Award to be in writing, and copy delivered.

9. Every determination or award of Fence-viewers shall be in writing signed by such of them as concur therein, and they shall transmit the same (or a certified copy thereof) to the Clerk of the Municipality, and shall also deliver a copy to every party requiring the same, and such determination or award shall be binding on the parties thereto. 8 Vic. cap. 20, sec. 2.

What the Fence-viewers are to determine.

10. When the dispute is as to the commencement or extent of the part of the fence to be made or repaired by either party, or as to the opening of a ditch or water-course, or as to the part, width, depth or extent that any person should open or make, either party may by writing notify the Fence-viewers of the dispute, and name in the notice for the investigation thereof the time and place of meeting, and shall also notify the other party to appear at the same time and place. 8 Vic. cap. 20, secs. 2, 12; *see* 18 Vic. cap. 137.

The Fence-viewers, upon receiving notice, are to attend, investigate and decide or apportion, &c.

11. On receiving such notice the Fence-viewers shall attend at the time and place named, and after being satisfied that the other party has been also duly notified, they shall examine the premises and hear the parties and their witnesses if demanded, and according to the subject matter of the reference shall decide the commencement or extent of the part of the fence

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which either party claims to have made or repaired, or refuses to make or repair; or shall divide or apportion the ditch or water course among the several parties, having due regard to the interests of each in the opening thereof, and shall fully determine the matters in dispute. 8 Vic. cap. 20, sec. 2.

To decide what length of time shall be allowed to open ditches, &c.

12. On any reference regarding the opening or making of a ditch or water-course, the Fence-viewers shall decide what length of time each of the parties shall have to open the share of the ditch or water-course which the Fence-viewers decide each such party shall open; and if it appears to the Fence-viewers that the owner or occupier of any tract of land is not sufficiently interested in the opening of the ditch or water-course to make him liable to perform any part thereof, and at the same time that it is necessary for the other party that such ditch should be continued across such tract, they may award the same to be done at the expense of such other party; and after such award, the last-mentioned party may open the ditch or water-course across the tract at his own expense, without being a trespasser. 8 Vic. cap. 20, secs. 12, 13.

When an award of Fence-viewers may be reviewed.

13. When, by reason of any material change of circumstances in respect to the improvement and occupation of adjacent lots or parcels of land, an award previously made under this Act ceases, in the opinion of either of the parties, to be equitable between them, such party may obtain another award of Fence-viewers by a like mode of proceeding; and if the Fence-viewers called upon to make a subsequent award find no reason for making an alteration, the whole cost of the reference shall be borne by the party at whose instance it has been made. 8 Vic. cap. 20, sec. 12.

If a party refuses to perform his share of a ditch or water course, the other party may do it for him, but at the expense of the person in default.

14. If any party neglects or refuses upon demand made in writing as aforesaid, to open or make and keep open, his share or proportion of the ditch or water course allotted or awarded to him by the Fence-viewers, within the time allowed by them, any of the other parties may, after first completing his own share or proportion, open the share or proportion allotted to the party in default, and shall be entitled to recover not exceeding forty cents per rod for the same from the party so in default. 8 Vic. cap. 20, sec. 14.

If a party does not perform his share of the division fence, the other party

15. If after an award of Fence-viewers, or after being required by a demand in writing by the party occupying the adjoining tract, or a tract separated therefrom by a river, pond or creek, a party in the occupation of any tract of land neglects or refuses for a period of thirty days, to make or repair (as

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may do it, but at the expense of the party in default.

the case may be) his proportion of the division or line fence between his tract and such adjoining or separated tract, or if the party making the demand neglects or refuses for the like period to make or repair his own proportion of the fence, either party, after first completing his own proportion, may make or repair, in a substantial manner and of good sound materials, the whole or any part of the fence, which ought to have been made or repaired by the other party, and may recover from him the value thereof. 8 Vic. cap. 20, sec. 3.

How the amount shall be ascertained.

16. To ascertain the amount payable by any person who, under the authority of this Act, makes or repairs a fence, or makes, opens, or keeps open any ditch or water course which another person should have done, and to enforce the payment of such amount, the following proceedings shall be taken. 8 Vic. cap. 20, sec, 4.

A Justice of the Peace to summon three Fence-viewers.

1. Any of the persons interested may apply to a Justice of the Peace residing within the Municipality or Township in which any such fence is situated, and if there be no such Justice residing therein, then to any Justice of the Peace residing in any adjacent Municipality or Township, and thereupon such Justice shall issue a summons under his hand and seal, directed, by name, to three Fence-viewers of the Municipality in which the fence is situated, requiring them to attend at the place and on the day and hour therein mentioned, to view such fence and to appraise the same. 8 Vic. cap. 20, sec. 4.

And the party alleged to be in default.

2. The Justice shall at the same time issue a summons to the party so having neglected or refused to make and repair his proportion thereof (who shall thenceforth be considered the defendant in the case), requiring him to appear at the same time and place, to shew cause why the party claiming payment (who shall thenceforth be considered the plaintiff in the case) should not recover the same. 8 Vic. cap. 20, sec. 4.

Fence-viewers to receive four days' notice.

3. The Fence-viewers shall be personally served with the summons at least four days before the day named for their attendance. 8 Vic. cap. 20, sec. 5.

Witnesses may be summoned.

4. If either party desires to procure the attendance of any person to give evidence before the Fence-viewers, the Justice shall, upon the application of such party, issue a summons to such witness or witnesses to attend before the Fence-viewers at the time and place mentioned in the summons to the Fence-viewers. 8 Vic. cap. 20, sec. 6.

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The Fence-viewers may swear witnesses.

5. The Fence-viewers, when met at the time and place appointed, shall, whenever desired by either party, or whenever they themselves think it proper, may administer an oath to any witness, which oath is to be in the following form: 8 Vic. cap. 20, sec. 6.

Oath.

"You do solemnly swear that you will true answer make to such questions as may be asked of you by either of the Fence-viewers now present, touching the matters which they are now to examine and determine. So help you God."

A majority of the Fence-viewers may decide.

6. The Fence-viewers, or any two of them being present, shall, after having duly examined the fence and received evidence, determine whether the plaintiff is entitled to recover any and what sum from the defendant. 8 Vic. cap. 20, sec. 5.

What to be decided if there has been no previous award

7. In case the commencement or extent of the part of the division or line fence which each should make or repair had not been previously determined by the award of Fence-viewers, the Fence-viewers named in the summons, or any two of them, shall determine the same; and if they determine that the plaintiff is entitled to recover from the defendant, they shall also state what distance of fence the defendant should have made or repaired. 8 Vic. cap. 20, sec. 5.

Fence-viewers to deliver copy of award if required.

8. The Fence-viewers, if required by either party, before they report, shall give to such party a copy of their determination. 8 Vic. cap. 20, sec. 5.

To deliver their award to the Justice of the Peace,

9. The Fence-viewers shall report their determination in writing under their hands to the Justice who issued the summons, and such determination shall be final. 8 Vic. c. 20, s. 5.

Who shall send the same to the Clerk of the Division Court,

10. The Justice to whom the determination of the Fence-viewers is returned, shall transmit the same to the Clerk of the Division Court having jurisdiction over that part of the Municipality, and shall certify and transmit a copy thereof to the Clerk of the Municipality, to be entered in the book in which the Municipal proceedings are recorded. 8 Vic. cap. 20, s. 7.

Who after forty days may issue execution thereon.

11. After the expiration of forty days from the time of the determination, the Clerk of the Division Court shall issue an execution against the goods and chattels of the defendant in the same manner as if the party in whose favor the determination has been made had recovered judgment in the Division Court for the sum which the Fence-viewers have determined him to be entitled to receive, with costs. 8 Vic. cap. 20, sec. 7.

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Fees.

17. The following fees, and no more, may be received under this Act, by the persons mentioned, that is to say:

To the Justice of the Peace:

For summons to Fence-viewers, twenty-five cents;

For subpœna, which may contain three names, twenty-five cents.

For transmitting copy of Fence-viewers' determination to Division Court and to Clerk of the Municipality, twenty-five cents.

To the Fence-viewers:

One dollar per day each: if less than half a day employed, fifty-cents.

To the Bailiff or Constable employed:

For serving summons or subpœna, twenty-cents.

Mileage—per mile, six and two-thirds cents.

To Witness—per day, each, fifty cents. 8 Vic. c. 20, s. 16.

Disbursements.

18. Upon the party in whose favor the determination of the Fence-viewers has been made, making an affidavit, which the Clerk of the Division Court may administer, that such fees have been duly paid and disbursed to the persons entitled thereto, the Clerk shall include the amount thereof in the execution, and when collected, shall pay over the same to the said party. 8 Vic. cap. 20, sec. 17.

CON. STAT. U. C.—CHAPTER LVIII.

AN ACT RESPECTING WEIGHTS AND MEASURES.

Her Majesty by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

The standard weights and measures to remain in the custody of the Provincial Secretary.

1. The Set of Weights and Measures according to the standard of Her Majesty's Exchequer in England, heretofore procured for Upper Canada, shall at all times be and remain in the charge and custody of the Provincial Secretary. 4 Geo. IV., cap. 16, sec. 2.

Provincial Secretary to furnish each each Municipality with standard weights, &c.

2. Whenever any Municipal Council, authorized to appoint an Inspector of Weights and Measures, addresses the Governor requesting that the Municipality may be furnished with a true copy or set of such weights and measures, the Governor may

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direct the Provincial Secretary forthwith, at the cost of the Municipal Corporation, to furnish such copy or set, made of such durable materials as the Secretary deems the most proper for the purpose. 4 Geo. IV. cap. 16, sec. 3; 12 Vic. cap. 85, sec. 12; *see* 22 Vic. cap. 99, secs. 273, 274.

Every City Council may appoint one or more Inspectors of weights, &c.

3. The Municipal Council of every City may by By-law appoint one or more Inspectors of Weights and Measures for the Municipality. 12 Vic. cap. 85, sec. 12; 22 Vic. cap. 99, sec. 274.

Every Town Council may appoint one.

4. The Municipal Council of every incorporated Town may by by-law appoint one Inspector of Weights and Measures for the Municipality. 12 Vic. cap. 85, sec. 12; 22 Vic. cap. 99, sec. 274.

Every County Council may appoint one or more.

5. The Municipal Council of every County may by by-law appoint one or more Inspectors of Weights and Measures for the County, or for any Division thereof, to be defined in the by-law, but no appointment or Division under this section shall extend to or include incorporated Towns. 18 Vic. cap. 135, sec. 1; 22 Vic. cap. 99, sec. 274.

When more than one, the Council to appoint who to be the Senior.

6. When there are two or more Inspectors in the Municipality, the Council thereof shall, by by-law, appoint one of them to be the senior Inspector. 18 Vic. cap. 135, sec. 1; *see* 12 Vic. cap. 85, sec. 9.

To continue in office till removed.

7. Every Inspector now or hereafter appointed shall continue in office until removed by the Municipal Council. 18 Vic. cap. 135, sec. 1.

Standard to be deposited with Inspector or senior Inspector, as the case may be.

8. The Inspector, or, where there is more than one, the senior Inspector, shall have charge of the Standard Weights and Measures of the Municipality, and of the Mark, Stamp, or Brand, marked with the Royal initials, V. R., for the purpose of marking such weights and measures as are required to be marked under this Act; and such senior Inspector shall keep the same for the use of himself and of the other Inspectors. 12 Vic. cap. 85, secs. 2, 9.

Inspectors to take an oath of office.

9. Every Inspector shall, before entering on the duties of his office, take and subscribe the following oath:

The oath.

"I, A. B., do hereby promise and swear, that I will carefully preserve all Weights and Measures given me in charge, or for my use as Inspector, as a Standard for the Municipality (*or* Division, *as the case may be*) of ——, and that I will

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deliver them over to my successor in office, duly appointed for that purpose, when required so to do, and that I will honestly and faithfully discharge the duties of Inspector of Weights and Measures for such Municipality, (*or* Division) pursuant to the true intent and meaning of the law in that behalf, according to the best of my abilities and knowledge. So help me God." 12 Vic. cap. 85, sec. 2.

Inspector to inspect, and mark if correct, all weights and measures submitted to him.

10. Every Inspector shall carefully examine and compare, with the standard so furnished as aforesaid, any weights and measures presented to him for that purpose within his Municipality or Division, and when the same are found of the true weight and measure, he shall mark, stamp or brand the same, (if a measure, as near the two ends, top and bottom, as may be,) with the stamp or brand furnished for the purpose. 12 Vic. cap. 85, sec. 3.

Inspector to attend for that purpose at such times and places as the Municipal Council appoints.

11. Every Inspector shall attend at such time and place in his Municipality or Division as the Municipal Council may appoint, once, but not oftener than twice in each year, with the Stamps and Set of Standard Weights and Measures in his custody, to examine and compare, and if found correct, to stamp all weights and measures brought to him for that purpose.

To give notice.

12. He shall give one month's notice of the time and place so appointed, by publishing the same in one or more newspapers, or by posting up copies thereof in four of the most public places in his Municipality or Division. 12 Vic. cap. 85, secs. 4, 10.

Fees of Inspectors.

13. Every Inspector may demand and receive ten cents, and no more, for every weight or measure he marks or stamps. 12 Vic. cap. 85, sec. 8.

Standard weights of different kinds of grain, &c., as established for U. C.

14. The following rates shall be the Standard Weight, and shall in all cases be allowed to be equal to the Winchester Bushel, namely :

Wheat,	Sixty pounds,
Indian Corn,	Fifty-six pounds,
Rye,	Fifty-six pounds,
Peas,	Sixty pounds,
Barley,	Forty-eight pounds,
Oats,	Thirty-four pounds,
Beans,	Sixty pounds,
Clover Seed,	Sixty pounds,
Timothy Seed,	Forty-eight pounds,
Buck-Wheat,	Forty-eight pounds,

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But the effect of any contract made before this Act, shall not be varied by anything herein contained. 16 Vic. cap. 193; sec. 2. Certain contracts not affected.

15. Upon every sale and delivery, and in every contract for the sale or delivery of any grain, pulse or seeds, the bushel shall, unless otherwise agreed upon by the parties, be taken to mean the weight of a bushel as regulated by this Act, and not a bushel in measure, or according to any greater or less weight. 16 Vic. cap. 193, sec. 3. The bushel to be regulated by weight not by measure.

16. Every storekeeper, shopkeeper, miller, distiller, butcher baker, huckster, or other trading person, and every wharfinger or forwarder in any County or place in Upper Canada, who, two months after the appointment of an Inspector therefor, uses any weight or measure, which has not been duly stamped according to law, or which may be found light or otherwise unjust, shall, on conviction, forfeit a sum of not more than twenty nor less than eight dollars; and every such light or unjust weight or measure so used shall, on being discovered by any Inspector, be seized, and on conviction of the person using the same, shall be forfeited, and broken up by the Inspector. 12 Vic. cap. 85, sec. 4; 4 Geo. IV. cap. 16, s. 6; 3 Vic. cap. 17, sec. 3. Penalty if weight is not stamped within a certain time.

17. Every Inspector may, at all reasonable times, enter any shop, store, warehouse, stall, yard or place whatsoever, within his County or Division, where any commodity is bought, sold or exchanged, weighed, exposed or kept for sale, or weighed for conveyance or carriage, and there examine all weights, measures, steelyards or other weighing machines, and compare and try the same with the copies of the standard weights and measures provided by law. 12 Vic. cap. 85, s. 5. Inspector may enter shops, &c., to examine weights and measures.

18. If, upon such examination, it appears that the said weights or measures, or any or either of them, have not been stamped, or are light or otherwise unjust, the same shall be liable to be seized and forfeited, and the person or persons in whose possession the same are found, shall, on conviction, forfeit a sum not exceeding eight dollars for the first, and twenty dollars for every subsequent offence. Forfeiture of false or unstamped weights and measures.

19. Any person who has in his possession a steelyard or other weighing machine, which on such examination is found incorrect or otherwise unjust, or who, when thereto required, neglects or refuses to produce for such examination all weights, measures, steelyards or other weighing machines in his posses- Penalty for having false steel-yards.

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sion, or who otherwise obstructs or hinders such examination, shall be liable to a like penalty. 12 Vic. cap. 85, sec. 5.

Penalty not to be incurred till two months after receipt of standard weights, &c.

20. No penalty as aforesaid shall be incurred in any County, Division or locality, until two months at least after a standard of weights and measures have been received by the Inspector legally appointed therefor.

How penalties recoverable.

21. All penalties under this Act, together with all reasonable costs, shall be recoverable before any Justice of the Peace, on the oath of the Inspector or of any other credible witness, and shall, if not forthwith paid, be levied by distress and sale of the goods and chattels of the offender, and in default of distress the offender shall be committed to the Common Gaol of the County wherein the conviction took place for a term not exceeding one month; and all such penalties when recovered, shall belong to the Crown for the public uses of the Province, and shall be paid over to the Inspector, and shall by him be accounted for in the same manner as other public moneys coming into his hand by virtue of his office. 12 Vic. cap. 85, sec. 5.

When recovered, how to be applied

Punishment of persons forging stamps, &c.

22. If any person makes, forges, or counterfeits, or causes, or procures to be made, forged or counterfeited, or knowingly acts or assists in the making, forging or counterfeiting any stamp or mark legally used for the stamping or marking of any weights or measures in any County or place in Upper Canada, he shall be guilty of a misdemeanor, and on being convicted thereof, shall be liable at the discretion of the Court, to be fined and imprisoned in the Common Goal of the County where the conviction takes place; but such fine shall not exceed eighty dollars and such imprisonment shall not exceed three months.

Penalty for knowingly selling, &c., any weight or measure with counterfeit stamp

23. If any person knowingly sells, alters, disposes of or exposes to sale any weight or measure, with such forged or counterfeit stamp or mark thereon, he shall, for every such offence, forfeit, on conviction, a sum not exceeding forty dollars, nor less than eight dollars, to be recovered under the provisions of the twenty-first section of this Act; and all weights and measures with such forged or counterfeited stamps or marks shall be forfeited, and broken up by the Inspector. 12 Vic. cap. 85, sec. 6.

Penalty if Inspector stamps weights or

24. If any Inspector stamps, brands or marks any weight or measure without having first duly compared and verified the same with and by the Standard Weights and Measures

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provided by law for that purpose, or is guilty of a breach of any duty imposed upon him by this Act, he shall, on conviction, forfeit a sum not exceeding twenty dollars to be recovered and applied as aforesaid. 12 Vic. cap. 85, sec. 7. measures without due examination.

25. When any Inspector of Weights and Measures is removed from office, or resigns, or removes from the place for which he has been appointed, he shall deliver to his successor in office, or to such other person as the Council of the Municipality may for that purpose by by-law appoint, all the beams, stamps and Standard Weights and Measures in his possession as such Inspector, and in case of the death of such Inspector, his representatives shall in like manner deliver the same to his successor in office, or to such other person as aforesaid. Standards to be delivered over to successors in office.

26. In case of refusal or neglect to deliver such beams, stamps and Standard Weights and Measures entire and complete, the successor in office may maintain an action on the case, against the person or persons so refusing or neglecting, and shall recover double the value of such of them as have not been delivered, and in every such action in which judgment is rendered for the plaintiff, he shall recover double costs; and of the damages levied, one moiety shall be retained by the plaintiff, and the other moiety shall be applied in supplying such standards as may be required in his office. 12 Vic. cap. 85, sec. 13. Remedy by action for standards not so delivered.

27. Any conviction under this Act may be appealed in the manner provided in the Act respecting Appeals in cases of Summary Convictions. 12 Vic. cap. 85, sec. 14. Appeals.

28. This Act is to be subject to and controlled by and to be construed with the Consolidated Statutes of Canada respecting Weights and Measures. 22 Vic. c. 21 (1859). This Act governed by Joint Act, cap. 53.

CON. STAT. U. C.—CHAPTER LIX.

AN ACT RESPECTING THE PUBLIC HEALTH.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. The Health Officers of any Municipality or Police Village in Upper Canada, or any two of them, may, in the day time, as often as they think necessary, enter into and upon any premises in the place for which they hold office, and examine such premises. 5 Wm. IV. cap. 10, sec. 2. Health Officers may enter upon and examine any premises

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If found unclean, may order proprietor to cleanse.

2. If, upon such examination, they find that the premises are in a filthy or unclean state, or that any matter or thing is thereon which, in their opinion, may endanger the public health, they or any two of them may order the proprietor or occupant of the premises to cleanse the same, and to remove what is so found thereon. 5 Wm. IV. cap. 10, sec. 2.

In case of his neglect or refusal, the Health Officers and Constables may enter and cleanse.

3. Such Health Officers, in case the proprietor or occupier of the premises neglects or refuses to obey their directions, may call to their assistance all Constables and any other persons they think fit, and may enter on the premises and cleanse the same, and remove therefrom and destroy what in their opinion it is necessary to remove or destroy for the preservation of the public health. 5 Wm. 4, cap. 10, sec. 2.

The Governor may make rules respecting Vessels entering Ports, &c.

4. The Governor-in-Council may make and declare such regulations concerning the entry or departure of boats or vessels at the different ports or places in Upper Canada, and concerning the landing of passengers or cargoes from such boats or vessels, or the receiving passengers and cargoes on board of the same, as may be thought best calculated to preserve the public health. 5 Wm. IV. cap. 10, sec. 3.

Penalty for disobedience of Health Officers, &c.

5. If any person wilfully disobeys or resists any lawful order of the Health Officers, or of any two of them, or wilfully violates any regulation made and declared by the Governor-in-Council under this Act, or wilfully resists or obstructs the Health Officers in the execution of their duties, such person, on conviction before two or more of Her Majesty's Justices of the Peace for the locality where the offender resides, or where the offence has been committed, shall pay a fine of not less than four dollars nor more than eighty dollars; which fine shall be paid to Her Majesty's Receiver-General for the public uses of the Province. 5 Wm. 4, cap. 10, sec 4; 16 Vic. cap. 178, sec. 18.

Proceedings in case of malignant diseases in crowded or unhealthy places.

6. Whenever a disease of a malignant and fatal character is discovered to exist in any dwelling-house, or out-house temporarily occupied as a dwelling, in a city, town or village in Upper Canada or within a mile thereof, and which house is situated in an unhealthy or a crowded part of the city, town or village, or adjoining country, or is in a filthy and neglected state, or is inhabited by too many persons, the Board of Health of the city, town or village, or a majority of the members thereof, may, in the exercise of a sound discretion, and at the expense of the Board, compel the inhabitants of such dwelling-house or out-house to remove therefrom, and may place them

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in sheds or tents, or other good shelter, in some more salubrious situation, until measures can be taken, under the direction and at the expense of the Board, for the immediate cleansing, ventilation, purification and disinfection, of such dwelling-house or out-house. 5 Wm. 4, cap. 10, sec. 6; see ante chapter 54, sec. 245, page 583.

CON. STAT. U. C.—CHAPTER LX.

AN ACT TO ENCOURAGE THE DESTROYING OF WOLVES.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

When any person producing to a J.P. the head of a wolf with the ears on, entitled to a reward.

1 If any person produces the head of a wolf with the ears on, before any Justice of the Peace acting for any County in Upper Canada, and makes oath or affirmation, (*as the case may be,*) or otherwise proves to the satisfaction of such Justice, that the wolf was killed within that County, or within one mile of an actual settlement in the County, he shall be entitled to receive from the Treasurer of the County the sum of six dollars as a bounty for the same. 6 Wm. 4, cap. 29, sec. 2.

J. P. to give his certificate

2. In case the Justice of the Peace before whom the head of the wolf is produced, be satisfied of the fact that the wolf was killed as in the preceding section mentioned, he shall first cut off the ears thereof, and then give the person a certificate that the fact of the wolf having been killed as in the last section mentioned has been proved to his satisfaction, and such certificate shall authorize the person holding the same to demand and receive from the Treasurer of the County the said bounty of six dollars. 6 Wm. IV. cap. 29, sec. 3.

Treasurer to pay the reward if in funds.

3. The Treasurer of the County shall forthwith pay such bounty to the person presenting the certificate, provided the County funds in his hands enable him so to do; and if the said funds do not so enable him, then the Treasurer shall pay the same out of the moneys of the County which next thereafter come into his hands. 6 Wm. IV. cap. 29, sec. 4.

Other County expenses to be first paid.

4. The Treasurer of a County shall not pay the bounty to which any such certificate entitles the person presenting the same, until he has paid the annual expenses of the County, arising from the building of a Court House and Gaol, and keeping the same in repair, the fees of the Clerk of the Peace,

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the salary of the Gaoler, and the maintenance of the prisoners. 6 Wm. IV. cap. 29, sec. 5.

If not paid certificate may be tendered in discharge of rates.

5. When the funds of any County do not enable the Treasurer thereof to pay the bounty, the certificate therefor shall be a lawful tender to the full value and amount therein specified, for and towards the discharge of any County rate or assessment to be collected from any person within the County in which the wolf was destroyed, and shall be accepted and taken by the Collector of any Township within the County as equivalent to so much of the current money of Upper Canada, and may be by him paid and delivered over to the County Treasurer, by whom the same shall in like manner be taken and accepted as equivalent to so much of the current money aforesaid. 6 Wm. IV. cap. 29, sec. 6.

CON. STAT. U. C.—CHAPTER LXXIX.

AN ACT TO PREVENT ACCIDENTS FROM MACHINERY.

Her Majesty's, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Guards, &c., to be erected about machinery of steamboats, mills, &c., to prevent accidents to passengers and others.

1. The owners of every steam-boat, steam-car and steam-carriage, and of every mill or building, in which machinery is used, shall erect good and substantial guards round such machinery so as to prevent passengers and other persons on board of, or entering or being in the same, respectively, from coming in contact with the machinery used therein or attached thereto. 1 Vic. cap. 18, sec. 1.

Collectors of Customs authorised to examine steam-boats, steam-cars, and steam-carriages, and to require the erection of necessary guards.

2. The Collector of Customs of every port in Upper Canada, or his Deputy, shall enter into or upon every steam-boat, steam-car and steam-carriage, arriving at his port or station, and carefully examine whether there are proper guards round the machinery of the same, so as to secure the safety of persons when such machinery is in operation, and if there be not proper guards or if they be not properly and substantially erected, he or his Deputy shall notify the same to the master or person in charge of such steam-boat, steam-car or steam-carriage, and direct him to make such proper guards or to make them in a proper and substantial manner. 1 Vic. cap. 18, sec. 2.

Justices of the Peace, &c., to enter

3. It shall be the duty of every Justice of the Peace in the County or City in which he resides and usually acts as a Jus-

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tice of the Peace, to enter into or upon all buildings wherein machinery is erected, and to inspect and examine the machinery thereof or attached thereto; and if upon such examination he finds that there are not proper guards erected or that the guards used in and about such machinery are insufficient, such justice shall notify the same to the owner or occupier of such building, and shall direct the necessary guards to be erected. 1 Vic. cap. 18, sec. 3.

mills, &c., and to examine, &c.

4. In case, upon the inspection of any steam-boat, steam-car or steam-carriage, or of any building wherein or whereto machinery is used or attached, as aforesaid, it appears to the Collector or Justice respectively inspecting the same, that the guards erected or to be erected in compliance with this Act are sufficiently safe and substantial, such Collector or Justice shall deliver to the person in charge of such steamboat, steam-carriage or car, and to the proprietor or occupier of such building, as aforesaid, a certificate to that effect; and if such safeguards are at all times kept in good and sufficient repair, such certificate shall for six months from the date thereof, be a good and sufficient protection to the masters and owners and occupiers of such steam-boat, steam-carriage or car and building respectively, as aforesaid, against any penalty to be incurred under the provisions of this Act. 1 Vic. cap. 18, sec. 5.

Collector or Justice to deliver certificate of sufficiency of guards, &c.

Certificate to afford protection for six months.

5. In case the master or person in charge of any steam-boat, steam-car or steam-carriage, or the owner or occupier of any building wherein machinery has been erected, as aforesaid, neglects or refuses to comply with the directions of such Collector or Deputy Collector or Justice of the Peace (as the case may be), and be convicted before one Justice of the Peace, he shall forfeit and pay for every such offence a sum not exceeding four dollars and the costs of conviction; and in default of payment of such sum and costs the offender shall, by a warrant under the hand and seal of such Justice, be sent to the common gaol of the County or City within which the offence was committed, for any period not exceeding thirty days. 1 Vic. cap. 18, sec. 4.

Penalty in case of neglect to erect guards by owners or masters, &c.

CON. STAT. U. C.—CHAPTER CXXV.

AN ACT RESPECTING INQUESTS BY CORONERS.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

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In what cases only inquests shall be held

1. No inquest shall be held on the body of any deceased person by any Coroner until it has been made to appear to such Coroner that there is reason to believe that the deceased died from violence or unfair means, or by culpable or negligent conduct, either of himself or of others under such circumstances as require investigation and not through mere accident or mischance. 13, 14 Vic. cap. 56, sec. 1.

Proceedings in case of the death of any prisoner or person confined in a Lunatic Asylum.

2. But upon the death of any prisoner or of any lunatic confined in any Lunatic Asylum, the Warden, Gaoler, Keeper or Superintendent of any Penitentiary, Gaol, Prison, House of Correction, Lock-up-house, House of Industry or Lunatic Asylum in which such prisoner or lunatic dies, shall immediately give notice thereof to some Coroner of the County or City in which such death has taken place, and such Coroner shall proceed forthwith to hold an inquest upon the body. 13, 14 Vic. cap. 56, sec. 2.

Penalty on persons summoned to attend inquests and not attending.

3. If any person, having been duly summoned as a juror to serve, or as a witness to give evidence upon any Coroner's inquest, does not, after being openly called three times, appear and serve as such juror, or appear and give evidence as such witness, the Coroner may impose a fine upon the delinquent person not exceeding four dollars; and shall thereupon make out and sign a certificate, containing the name, residence and trade or calling of such person, the amount of the fine imposed, and the cause of the fine, and shall transmit such certificate to the Clerk of the Peace of the County in which such person resides, on or before the first day of the Quarter Sessions of the Peace then next ensuing, and shall cause a copy of such certificate to be served upon such person by leaving it at his residence, within a reasonable time after the inquest.

And how enforced.

4. The fine so certified shall be estreated, levied and applied in like manner, and subject to the like powers, provisions and penalties in all respects, as if it had been part of the fines imposed at such Quarter Sessions.

Former powers of the Coroner not to be affected

5. Nothing herein contained shall affect any power otherwise by law vested in any Coroner for compelling any person to appear and give evidence before him, or for punishing any person for contempt of Court, in not so appearing and giving evidence or otherwise. 13, 14 Vic. cap. 56, sec. 3.

Omission of unnecessary

6. No inquisition found upon or by any Coroner's Inquest, nor any judgment recorded upon or by virtue of any such

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inquisition, shall be quashed, stayed or reversed for want of the averment therein of any matter unnecessary to be proved, nor for the omission of any technical words of mere form, and in all cases of technical defect, either of the Superior Courts of Common Law, or any Judge thereof, or any Judge of Assize or Gaol Delivery, may, upon any such inquisition being called in question before him or them, order the same to be amended. 13, 14 Vic. cap. 56, sec. 4.

words, &c., not to vitiate any inquisition.

7. Whenever, upon the summoning or holding of any Coroner's Inquest, the Coroner finds that the deceased was attended during his or her last illness or at his or her death, by any legally qualified medical practitioner, the Coroner may issue his order for the attendance of such practitioner as a witness at such inquest, in the form following:

Coroner may summon a medical practitioner to attend at any inquest.

CORONER'S INQUEST AT —— UPON THE BODY OF ——.

By virtue of this my order, as Coroner for ——, you are required to appear before me and the Jury, at ——, on the —— day of ——, at —— o'clock, to give evidence touching the cause of death of ——, (*and when the witness is required to make or assist at a* post mortem *examination; add*) and make or assist in making a *post mortem* examination of the body, with (*or* without) an analysis (*as the case may be*), and report thereon at the said inquest.

(Signed) ——, Coroner.

13, 14 Vic. cap. 56, sec. 5.

8. If the Coroner finds that the deceased was not so attended, he may issue his order for the attendance of any legally qualified medical practitioner being at the time in actual practice in or near the place where the death happened; and the Coroner may, at any time before the termination of the inquest, direct a *post mortem* examination, with or without an analysis of the contents of the stomach or intestines, by the medical witness summoned to attend at such inquest; but if any person states upon oath before the Coroner, that in his belief the death was caused partly or entirely by the improper or negligent treatment of a medical practitioner or other person, such medical practitioner or other person shall not assist at the *post mortem* examination. 13, 14 Vic. cap. 56, sec. 5.

If the Coroner finds that the deceased was not so attended, &c.

9. Whenever it appears to the majority of the jurymen sitting at any Coroner's inquest, that the cause of death has not been satisfactorily explained by the evidence of the medical practitioner or other witnesses examined in the first instance, such

A majority of the jurymen may require the Coroner to summon

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another medical practitioner.

majority may name to the Coroner in writing, any other legally qualified medical practitioner or practitioners, and require the Coroner to issue his order in the form hereinbefore mentioned for the attendance of such last mentioned medical practitioner or practitioners, as a witness or witnesses, and for the performance of such *post mortem* examination as in the last preceding section mentioned, and whether before performed or not; and if the Coroner refuses to issue such order, he is guilty of a misdemeanor, and shall be punishable by a fine not exceeding forty dollars, or by imprisonment not exceeding one month, or by both fine and imprisonment. 13, 14 Vic. cap. 56, sec. 6.

Penalty on Coroner refusing.

Allowance to such medical practitioner.

10. Where any legally qualified medical practitioner has attended in obedience to any such order as aforesaid, he shall receive for such attendance, if without a *post mortem* examination, five dollars; if with a *post mortem* examination, without an analysis of the contents of the stomach or intestines, ten dollars; if with such analysis, twenty dollars, together with the sum of twenty cents per mile, for each mile he has to travel to and from such inquest, such travel to be proved by his own oath to the Coroner, who may administer the same; and the Coroner shall make his order on the Treasurer of the County in which the inquest is holden, in favor of such medical practitioner, for the payment of such fees or remuneration, and such Treasurer shall pay the sum mentioned in such order to such medical witness, out of any funds he may then have in the County Treasury. 13, 14 Vic. cap. 56, sec. 7.

To be paid on Coroner's order, and by whom.

Penalty on practitioners summoned and failing to attend.

11. Where any such order for the attendance of any medical practitioner has been personally served, or if not personally served, has been received by him or left at his residence in sufficient time for him to have obeyed such order, and he has not obeyed the same, he shall forfeit the sum of forty dollars upon complaint by the Coroner who held or by any two of the jury who sat on the inquest, made before any two Justices of the Peace of the County where the inquest has been held, or of the County where such medical practitioner resides; and such Justices shall proceed to hear and adjudicate upon the complaint; and if such medical practitioner does not shew a sufficient reason for not having obeyed such order they shall enforce the said penalty by distress and sale of the offender's goods, in the same manner as they are empowered to do by the Consolidated Statute of Canada respecting the duties of Justices of the Peace out of Sessions in relation to Summary Convictions and Orders. 13, 14 Vic. cap. 56, sec. 8.

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CON. STAT. U. C.—CHAPTER CXXVII.

AN ACT RESPECTING COURT HOUSES, GAOLS AND HOUSES OF CORRECTION.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

THE CARE OF GAOLS AND COURT HOUSES, &C.

Custody of Gaols and Court-houses

1. The Sheriff shall have the care of the County Gaol, Gaol offices and yard, and the Gaoler's apartments, and the appointment of the keepers thereof. 22 Vic. cap. 99, sec. 398.

County Council to appoint keepers, &c.

2. The County Council shall have the care of the Court House, and of all offices and rooms connected therewith, whether the same forms a separate building or is connected with the Gaol, and shall have the appointment of the keepers thereof; and shall from time to time provide all necessary and proper accommodation for the Courts of Justice other than the Division Courts, and for all officers connected with such Courts of Justice. 22 Vic. cap. 99, sec. 399.

City gaols to be regulated by by-law.

3. In any City not being a separate County for all purposes, but having a Gaol or Court House separate from the County Gaol or Court House, the care of such City Gaol or Court House shall be regulated by the By-laws of the City Council. 22. Vic. cap. 99, sec. 400.

No license to be granted for retailing spirituous liquors within gaols.

4. No license shall be granted fron retailing spirituous liquors within any Gaol or Prison; and if any Gaoler, Keeper or officer, of any Gaol or Prison, sells, lends, uses or gives away, or knowingly permits or suffers any spirituous liquors or strong waters to be sold, used, lent or given away, in such Gaol or Prison, or to be brought into the same, other than such spirituous liquors or strong waters as may be prescribed by or given by the prescription and direction of a regular physician, surgeon or apothecary, such Gaoler, keeper or other officer, shall, for every such offence, forfeit the sum of eighty dollars, one moiety thereof to Her Majesty, for the public uses of the Province, and the other moiety, with full costs of suit to the person who sues for the same in any of Her Majesty's Courts of Record in Upper Canada; and in case any Gaoler or other officer having been so convicted, offends again in like manner, and be thereof a second time convicted, such second offence shall be a forfeiture of his office. 32 Geo. 3, cap. 8, sec. 15.

Penalty on Gaolers transgressing in this respect.

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Gaoler to have a yearly salary in place of all fees, perquisites or impositions whatever.

5. The Justices of the Peace within the limits of their respective Counties in Quarter Sessions assembled, shall appoint a reasonable yearly salary, according to their discretion, to be paid to the Gaoler, and such salary shall be in place of all fees, perquisites or impositions of any sort or kind whatever; and no Gaoler or officer belonging to the Gaol, shall demand or receive any fee, perquisite or other payment from any prisoner confined within the Gaol or Prison. 32 Geo. 3, cap. 8, sec. 17.

Penalty on persons supplying spirits to a prisoner in gaol.

6. If any person gives, conveys or supplies to any prisoner confined in any common Gaol or House of Correction in Upper Canada, any rum, brandy, whiskey or other spirituous liquors, contrary to the rules and regulations from time to time established by law, such offender, being duly convicted thereof before two Justices of the Peace, shall be fined a sum not exceeding twenty dollars. 3 Vic. cap. 14, sec. 1.

Any one Justice may summon the party accused.

7. In case any person be charged on the oath of one credible witness before any one Justice of the Peace, with any offence against this Act, such Justice may summon the person charged to appear at a time and place to be named in such summons; and if he do not appear accordingly, then (upon proof of the due service of the summons upon such person, by delivering the same to him personally) any two Justices of the Peace for the County where the offence is alleged to have been committed, may either proceed to hear and determine the case *ex parte*, or issue their warrant for apprehending such person, or any one of the said Justices may, if he thinks fit, without any previous summons, issue such warrant. 3 Vic. cap. 14, s. 2.

And in default of appearance, may proceed *ex parte*.

Power to summon witnesses.

8. Such Justices may summon witnesses either in support of the prosecution or for the defendant; and if any person, having been personally summoned to attend as a witness, neglects or refuses to attend, or fails to show some reasonable excuse for his non-attendance, he may be fined for such non-attendance by the Justices assembled to try the offence, in any sum not exceeding twenty dollars, to be enforced in manner and form mentioned in the last preceding section. 3 Vic. cap. 14, sec. 4.

In default of payment of fine and costs,

9. In default of payment of any fine imposed under the authority of this Act, together with the costs attending the same, within the period specified for the payment thereof at the time of the conviction by the Justices before whom such conviction has taken place, such Justices may issue their war-

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rant, directed to any constable, to levy the amount of such fine and costs of the goods of the offender within a certain time, to be in the said warrant expressed; and in case no distress sufficient to satisfy the amount can be found, they may commit the offender to the common gaol or house of correction of the County wherein the offence was committed, for any time not exceeding one month, unless the fine and costs be sooner paid. 3 Vic. cap. 14, sec. 5.

Offender may be committed.

10. No conviction under this Act shall be quashed for want of form, and no warrant of committal shall be held void by reason of any defect therein, if it be alleged that the party has been convicted, and there be a good and valid conviction to sustain the same. 3 Vic. cap. 14, sec. 3.

No conviction or committal to be quashed for want of form

GAOLS TO BE HOUSES OF CORRECTION.

11. Until separate Houses of Correction be erected in the several Counties in Upper Canada, the Common Gaol in each County respectively shall be a House of Correction; and every idle and disorderly person, or rogue and vagabond, and incorrigible rogue, and any other person by law subject to be committed to a House of Correction, shall, unless otherwise provided by law, be committed to the said Common Gaols respectively. 50 Geo. III. cap. 5.

Until Houses of Correction be erected, the Common Gaols in each respective County are constituted Houses of Correction.

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23 VIC.—CHAPTER VII.

AN ACT TO ESTABLISH A STANDARD WEIGHT FOR HAY AND STRAW.

[Assented to 23rd April, 1860.]

Whereas Standard Weights have been established for grain and vegetables, and it is expedient that they should also be established for hay and straw: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Preamble.

1. From and after the passing of this Act, the following shall be and are hereby declared to be the Standard Weights for Hay and Straw:

Standard weights for hay and straw.

A ton of Timothy, Clover or other Hay...	2000 lbs.
A ton of Straw.....	2000 "
A bundle of Timothy, Clover or other Hay with a Timothy band	15 "
A bundle of Timothy, Clover or other Hay bound with a withe	16 "
A bundle of Straw	12 "

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To apply to all future contracts.

2. In every contract entered into after this Act comes into force for the sale or delivery of hay or straw, and on every sale and delivery of hay or straw, the above weights shall be the only weights used, unless it is made to appear that the parties have agreed to the contrary.

Act limited to L. C.

3. This Act shall apply to Lower Canada only.

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28 VIC.—CHAPTER XXXV.

AN ACT TO EXTEND THE ACT RESPECTING THE INVESTIGATION OF ACCIDENTS BY FIRE TO THE COUNTRY PARTS.

[Assented to 19th May, 1860.]

Preamble.

Whereas it is expedient to extend to the country parts the provisions of the Act forming chapter eighty-eight of the Consolidated Statutes of Canada, intituled, *An Act respecting the Investigation of Accidents by Fire*, which has hitherto extended only to Cities and incorporated Towns and Villages: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Cap. 88 of Con. Stat. Can. extended to country parts.

1. The Act cited in the preamble shall, after the passing of this Act, extend and apply as well to places not lying within any City, incorporated Town or incorporated Village, as to places within the same, and the Coroners shall have the same powers and duties with regard to fires occurring in such places as with regard to fires in Cities or incorporated Towns and Villages; but in the case of an investigation concerning any fire occurring in any place to which the said Act is hereby extended, the allowance to the Coroner shall be paid by the person or persons requiring such inquiry; and such allowance shall not, in the country parts to which the said Act is hereby extended, be that fixed by the said Act for Cities, Towns and incorporated Villages, but shall be five dollars for the first day; and should the inquiry extend beyond one day, then four dollars for each of two days thereafter, and no more.

Proviso: as to payment and amount of allowance to Coroner.

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23 VIC.—CHAPTER XXXVI.

AN ACT TO AMEND CHAPTER NINETY-FIVE OF THE CONSOLIDATED STATUTES OF CANADA, INTITULED, "AN ACT RESPECTING LOTTERIES."

[Assented to 19th May, 1860.]

Preamble.

Whereas the provisions of chapter ninety five of the Consolidated Statutes of Canada, intituled, *An Act respecting*

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Lotteries, if understood to apply to the case of raffles for prizes of small value, such as are in general use at bazaars held for charitable objects, are calculated to interfere prejudicially with such objects; and whereas it was not the intention of the Legislature to include such raffles in the prohibition contained in the said Act, and it is expedient at once to remove doubt in this respect, and to provide against any possible abuse which might otherwise result from such legislative declaration; Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows: Con. Stat. Can. cap. 95.

1. The said Act does not apply to any raffle for prizes of small value, at any bazaar held for any charitable object; Provided, however, that, to entitle any such raffle hereafter to the exemption hereby declared, permission to hold the same must be obtained from the City or other Municipal Council, or from the Mayor, Reeve or other chief officer of the City, Town or other Municipality wherein such bazaar is held, and the articles so thereat to be raffled for must be such only as have thereat first been offered for sale, and must none of them be of a value exceeding fifty dollars. The said Act not to apply to raffles at bazaars for charitable purposes. Proviso.

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26 VIC.—CHAPTER I.

AN ACT TO ENABLE COUNTY COUNCILS TO RAISE MONEY FOR ASSISTING PERSONS IN CERTAIN CASES TO SOW THEIR LAND, AND FOR OTHER PURPOSES.

[Assented to 5th May, 1863.]

Whereas, from the failure last year of the crops in many of the townships of Upper Canada, many persons will not be able to procure seed without assistance, and it is expedient to empower County Councils to raise money for their relief: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows: Preamble.

1. Notwithstanding any law in force in Upper Canada, the Council of any County may pass a By-law or By-laws for raising money, not exceeding in the whole twenty thousand dollars, to be expended in the purchase of seed, and for the relief of persons suffering from the failure of the crops, and for no other purpose; and the debentures issued under such By-laws shall be a charge on the County. County Councils may raise money for buying seed, &c.

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Form of By-law.

Certain provisions not to apply.

2. Such By-law shall be in the form of Schedule A to this Act, and the sections numbered two hundred and twenty-two, two hundred and twenty-three, two hundred and twenty-four and two hundred and twenty-five of the Act respecting the Municipal Institutions of Upper Canada, chapter fifty-four of the Consolidated Statutes for Upper Canada, shall not apply thereto.

County to lend the money to the Townships.

3. The County Council shall lend the money so raised, in such sums as they may deem expedient, to Township Councils requesting the same, and shall impose and levy a special rate, in each year, against the Municipality so borrowing, over and above all other County rates, until the loan and interest are repaid.

Townships to lend to parties wanting seed, &c.

4. The Township Councils shall lend the money so borrowed, and may also lend any surplus Township funds in their possession, not otherwise appropriated, to the persons aforesaid, for the purposes aforesaid.

Or to purchase seed.

5. The Township Councils, if they deem it expedient, may purchase seed and deliver the same to the persons aforesaid, in the place of money.

Township Council to levy rates, &c., against borrowers.

6. The Township Council shall, by By-law, declare the time within which such loan shall be repaid, and shall impose, levy and collect a special annual rate, over and above all other rates, against the estate, real and personal, of the party borrowing, and all the rights and remedies shall apply thereto, which now or at any time hereafter shall apply to the collection of any other rate or tax upon such land, or the Council, if it see fit, may take other security, real or personal, for the payment of such loan.

Application of moneys raised.

7. No money raised under this Act shall be applied to any other purpose, and any surplus thereof unapplied shall be added to the sinking fund, for the redemption of the debentures issued as aforesaid.

Exemption from seizure.

8. No money lent or seed delivered, under this Act, shall be seized in execution, garnished or attached.

No By-law to be passed after 1st Nov., 1863.

9. No By-law shall be passed, and no debentures shall be issued, under any By-law passed in pursuance of this Act, after the first day of November, one thousand eight hundred and sixty-three.

Act limited to U. C.

10. This Act applies to Upper Canada only.

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SCHEDULE A.

BY-LAW No. ——.

Enacted by the County Council of the County of ——, under and by virtue of the Statute of this Province, passed in the year one thousand eight hundred and ——, intituled, *An Act to enable County Councils to raise money for assisting persons in certain cases to sow their land, and for other purposes.*

Whereas it is expedient to raise the sum of —— dollars, to be applied to the purposes in the said statute set forth; be it therefore enacted, under the authority of the said statute, that the said sum be forthwith raised for such purposes, and that the Warden do cause debentures of the County of —— to be issued, for the sum of —— dollars, which debentures shall be payable within ten years at furthest from the date hereof, and shall bear interest at the rate of six per cent. per annum, payable half-yearly, on the thirtieth day of June and thirty-first day of December in each year; principal and interest to be payable at ——, in the town of ——.

And whereas the sum of —— will require to be raised annually, for paying the said debt and interest, at the time and in the manner aforesaid; and whereas the amount of the whole ratable property in the said County, according to the last revised Assessment Rolls, amounts to —— dollars; be it therefore further enacted, that the sum of —— in the dollar on the said gross ratable value of property be levied and collected, in each year, over and beyond all other rates, general and special, for the purpose of paying the interest on, and creating a sinking fund to pay the said sum of —— dollars, raised under the authority of this By-law and the statute aforesaid.

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27 VIC.—CHAPTER XVII.

AN ACT TO ENABLE MUNICIPAL CORPORATIONS IN UPPER CANADA TO INVEST THEIR SURPLUS CLERGY RESERVE MONEY FOR EDUCATIONAL PURPOSES IN CERTAIN SECURITIES, AND TO LEGALIZE SUCH INVESTMENTS ALREADY MADE, AND FOR OTHER PURPOSES.

[Assented to 15th October, 1863.]

Preamble

Whereas Municipalities in Upper Canada, desiring to invest any of the moneys accruing to them from the Upper Canada Municipalities Fund, are bound by law to make such investment by purchasing Provincial, Consolidated Loan Fund, or

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Municipal Debentures, and it is expedient that further discretion should be allowed them as regards such investments; and whereas it is also expedient to authorize Boards of School Trustees to borrow such moneys from Municipal Corporations for the purchase of school sites or the erection of school-houses, or having surplus moneys for educational purposes, to invest the same: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Such surplus moneys may be set apart for education and invested, and in what securities.

1. From and after the passing of this Act, any Municipal Corporation having surplus moneys derived from the Upper Canada Municipalities Fund, shall have power, by By-law, to set such surplus apart for educational purposes, and to invest the same, as well as any other moneys held by such Municipal Corporation for, or by it lawfully appropriated to, educational purposes, in first mortgages secured on real estate held and used for farming purposes, and to be the first lien on or against such real estate, and from time to time, as such securities mature, to invest in other like securities, or in the securities already mentioned by law, as may be directed by such by-law, or by other by-laws passed for that purpose; Provided always, that no Municipal Corporation shall invest in such real estate securities within the limits of its own Municipality, nor shall any sum so invested exceed one-third of the value of the real estate on which it is secured, according to the last revised and corrected assessment roll at the time it is so invested.

Proviso: as to investment on real property.

Former investments confirmed.

2. And whereas several Municipalities have heretofore invested moneys derived from the said fund and set apart for special purposes, in real estate security, be it enacted that such investments shall be legal and valid.

Boards of School Trustees in cities and towns may invest surplus moneys in like manner.

3. The Board of School Trustees of any city or town in Upper Canada, having surplus moneys for educational purposes, may invest the same in the purchase of Provincial, Consolidated Loan Fund, or Municipal Debentures, or in such securities as are described in the first section of this Act, subject to the provisions, conditions, limitations and restrictions therein contained; and any by-law or resolution of any such Corporation heretofore made for authorizing any such investment, under which any such money has been so invested, shall be held to be a good and valid by-law or resolution.

Municipalities may loan such surplus to School Trustees.

4. Any Municipal Corporation having surplus moneys derived from the Upper Canada Municipalities Fund, shall have power by by-law to set such surplus apart for educational purposes, and to invest the same in a loan or loans to any

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Board or Boards of School Trustees within the limits of the Municipality, for such term or terms, and at such rate or rates of interest as may be agreed upon by and between the parties to such loan or loans respectively, and set forth in such by-law.

School Trustees may borrow the same for certain purposes with consent of freeholders, &c.

5. Any Board of School Trustees may, with the consent of the freeholders and householders of their school section first had and obtained at a special meeting duly called for that purpose, by by-law authorize the borrowing from any Municipal Corporation of any such surplus moneys as aforesaid, for such term and at such rate of interest as may be set forth in such by-law, for the purpose of purchasing a school site or school sites, or erecting a school-house or school-houses; and any sum or sums so borrowed shall be applied to that purpose, and to that only.

Liability of Municipal Councillors or School Trustees investing otherwise than authorized by law.

6. Any member of any Municipal Corporation or Board of School Trustees, who shall take part in or in any way be a party to the investment of any such moneys as are mentioned in this Act, by or on behalf of the Corporation of which he is a member, otherwise than as is authorized by this Act, or by the eleventh section of the Act respecting Clergy Reserves, or by any other law in that behalf made and provided, shall be held personally liable for any loss sustained by such Corporation, and shall also be guilty of a misdemeanor, and be liable to conviction in any Court of competent jurisdiction in Upper Canada, and upon conviction may be sentenced to fine or imprisonment, or both, in the discretion of such Court.

Act limited to U. C.

7. This Act shall apply to Upper Canada only.

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27 VIC.—CHAPTER XVIII.

AN ACT RELATIVE TO SUMMARY CONVICTIONS UNDER MUNICIPAL BY-LAWS IN UPPER CANADA.

[Assented to 15th October, 1863.]

Preamble.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Form of conviction in Schedule to be sufficient.

1. It shall not be necessary, in any conviction made under any By-law of any Municipal Corporation in Upper Canada, to set out the information, appearance or non-appearance of the defendant, or the evidence or By-law under which the conviction is made, but all such convictions may be in the form given in the Schedule of this Act.

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Witnesses may be compelled to give evidence.

2. In prosecuting under any By-law, or for the breach of any By-law, witnesses may be compelled to attend and give evidence, in the same manner and by the same process as witnesses are compelled to attend and give evidence on summary proceedings before Justices of the Peace in cases tried summarily under the statutes now in force in Upper Canada.

Who shall have jurisdiction.

3. Every Justice of the Peace for the County shall have jurisdiction in all cases arising under any By-law of any Municipality in such County.

Interpretation.

4. The word "County" in this Act and in the Schedule thereof shall include United Counties.

Act limited to U. C.

5. This Act shall only apply to Upper Canada.

SCHEDULE.

PROVINCE OF CANADA, County of ——, To wit. } Be it remembered, that on the —— day of ——, A. D. ——, at ——, in the County of ——, A. B. is convicted before the undersigned, one of Her Majesty's Justices of the Peace in and for the said County, for that the said A. B. (*stating the offence, and time and place, and when and where committed*), contrary to a certain By-law of the Municipality of the —— of ——, in the said County of ——, passed on the —— day of ——, A. D. ——, and intituled, (*reciting the title of the By-law*); and I adjudge the said A. B., for his said offence, to forfeit and pay the sum of ——, to be paid and applied according to law, and also to pay to C. D., the complainant, the sum of ——, for his costs in this behalf. And if the said several sums be not paid forthwith (*or* on or before the —— day of ——, A. D. ——, *as the case may be*), I order that the same be levied by distress and sale of the goods and chattels of the said A. B.; and in default of sufficient distress, I adjudge the said A. B. to be imprisoned in the common gaol of the said County of —— (*or* in the public lock-up at ——), for the space of —— days, unless the said several sums, and all costs and charges of conveying the said A. B. to such gaol (*or* lock-up), shall be sooner paid.

Given under my hand and seal, the day and year first above written, at ——, in the said County.

[L. S.] J. M., J. P.

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27 & 28 VIC.—CHAPTER LII.

AN ACT FOR THE PROTECTION OF INSECTIVOROUS AND OTHER BIRDS BENEFICIAL TO AGRICULTURE.

[Assented to 30th June, 1864.]

Preamble.

Whereas the destruction of insectivorous birds is prejudicial to agriculture, and the killing and capturing of singing birds and other small birds is a useless and cruel practice: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Certain birds only may be killed at certain seasons.

1. It shall not be lawful to shoot, destroy, kill, wound or injure, or to attempt to shoot, destroy, kill, wound or injure any bird whatsoever, save and except eagles, falcons, hawks, and other birds of the eagle kind, wild pigeons, rice birds, king fishers, crows and ravens, between the first day of March and the first day of August in any year.

Or taken in any way, or exposed for sale.

2. It shall not be lawful to take, capture, buy, sell, expose for sale, or have in possession any bird whatsoever, save the kinds above excepted; or to set, either wholly or in part, any net, trap, spring, snare, cage or other machine or engine, by which any bird whatsoever, save the kinds above excepted, might be killed or captured, between the first day of March and the first day of August in any year.

Nest, young or eggs not to be taken.

3. It shall not be lawful to take, injure, destroy, or have in possession any nest, young or egg of any bird whatsoever, except of eagles, falcons, hawks, and other birds of the eagle kind, and king-fishers, between the said first day of March and the said first day of August in any year.

Act not to apply to domesticated birds, &c.

4. Provided always, that this Act shall not apply to any imported birds, or to any domesticated bird or birds commonly known as poultry; nor shall it be unlawful to buy, sell, expose for sale, or possess any bird taken or captured at a season not forbidden by this Act, but the proof that such bird was so taken or captured shall lie wholly upon the party accused, whose oath alone shall suffice as such proof.

Penalty for contravention of this Act.

How recoverable, &c.

5. The violation of any provision of this Act shall subject the offender to the payment of a penalty of not less than one dollar and not more than ten dollars, to be recovered in a summary manner by summons before one Justice of the Peace of the district in which the offence was committed, who shall award the penalty the offender may be condemned to pay to the prosecutor, with all fees and costs incurred; and in default of immediate payment thereof, the offender shall be forthwith

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imprisoned in the nearest common gaol for a period of not less than two and not more than twenty days, at the discretion of such Justice of the Peace.

Power to seize birds unlawfully possessed.

6. Any person may seize, on view, any bird unlawfully possessed, and carry the same before any Justice of the Peace, to be by him confiscated; and it shall be the duty of all Market Clerks and Police officers on the spot to seize and confiscate, and, if alive, to liberate such birds; and every person is authorized to destroy all nets, traps, snares, cages or other machines or engines, set wholly or in part, whereby any kind of bird whatsoever, save the kinds above excepted in the first and fourth sections of this Act, might be unlawfully killed or captured.

License may be granted for scientific purposes.

7. The Minister of Agriculture, and all persons authorized by him to that effect, may grant written permissions to any person or persons who may be desirous of obtaining birds or eggs for *bonâ fide* scientific purposes, to procure them for that purpose during the close season, and such person or persons shall not be liable to any penalty under this Act.

Conviction not invalid for want of form.

8. No conviction shall be annulled or vacated for any defect in the form thereof, or for any omission or informality in any summons or other proceedings under this Act, so long as no substantial injustice results therefrom.

Act not to affect the Game Acts.

9. The present Act and all its provisions shall be so construed as not to annul or vacate any provision of the Game Acts of Canada, or any amendments thereto.

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28 VIC.—CHAPTER VIII.

AN ACT TO DEFINE THE RIGHT OF PROPERTY IN SWARMS OF BEES, AND TO EXEMPT THEM FROM SEIZURE IN CERTAIN CASES.

[Assented to 18th March, 1865.]

Preamble.

Whereas it is expedient to fix and define the right of property in Bees, and to exempt them from seizure in certain cases: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Bees in a state of freedom to be the property of their discoverer.

1. Bees living in a state of freedom shall be the property of the person discovering them, whether or not he be proprietor of the land on which they shall have established themselves.

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2. Bees reared and kept in hives shall be private property, and as such shall, to the extent of fifteen hives, be exempt from seizure for debt or for the discharge of any liability whatsoever, save and except the amount of their purchase money. — But if reared in hives, to be private property.

3. Whenever a swarm of bees shall leave a hive, the proprietor may reclaim them, so long as he can prove his right of property therein, and shall be entitled to take possession of them at any place on which they may settle, even if such place be on the land of another person, unless the swarm settles in a hive which is already occupied, in which case the proprietor shall lose all right of property in such swarm: Provided, however, that he shall notify the proprietor of such land beforehand, and compensate him for all damages. — Rights of proprietor in case of bees abandoning their hives. — Proviso.

4. Any unpursued swarm which shall lodge on any property whatsoever, without settling thereon, may be secured by the first comer, unless the proprietor of the land objects. — Unpursued swarms.

5. If the proprietor of a swarm of bees declines to follow such swarm, and another person undertakes the pursuit, such other person shall be substituted in the rights of the proprietor, and every swarm which is not followed shall become the property of the proprietor of the land on which it shall settle, without regard to the place from which it shall have come; and any person removing such swarm in his absence, and without his consent, shall be guilty of theft. — In case the owner declines to follow his bees.

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28 VIC.—CHAPTER XX.

AN ACT RESPECTING POLICE MAGISTRATES.

[Assented to 16th March, 1865.]

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows: — Preamble.

1. The Governor may, from time to time, appoint by commission under the Great Seal, fit and proper persons to be and act as Police Magistrates within any one or more Districts in Lower Canada, or within any one or more Counties in Upper Canada, or any temporary judicial district, or any provisional judicial disirict, in Upper Canada. — Appointment of Police Magistrates by commission under the great seal.

2. It shall not be necessary for any Police Magistrate appointed under this Act to possess any property qualification, or to be actually resident within any District, County or Counties, or temporary judicial district, or provisional judicial district, for which he may be appointed. — Such Magistrates need not have property qualification, or be resident within their districts.

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Powers and authority to be exercised by them.

3. The Police Magistrates appointed under this Act shall have and exercise all the powers and authority, rights and privileges now by law appertaining to Police Magistrates of Cities (except as regards offences against Municipal by-laws, and as regards other purely Municipal matters), and all the powers and authority, rights and privileges appertaining to Justices of the Peace generally, and shall be subject in all respects, except when otherwise provided by this Act, to the requirements of the law regarding Police Magistrates and the office of Justice of the Peace.

They shall keep minutes of proceedings before them, &c.

4. Every such Police Magistrate shall keep minutes of every proceeding had by and before him, and shall keep such accounts, make such returns, and collect such information within his jurisdiction, and perform such other duties, as the Governor may from time to time prescribe and require.

Application of moneys from penalties, &c., imposed by them.

5. All moneys arising from penalties, forfeitures and fines imposed by any such Police Magistrate, shall (if not directed by law to be otherwise appropriated) be from time to time paid to such Police Magistrate, who shall account for the same, and pay over or disburse the moneys arising therefrom, at such times, in such manner, and to such person or persons, as the Governor may from time to time direct.

Governor may direct the appointment of Constables to serve under the Magistrates.

6. The Governor-in-Council may, from time to time, direct and authorize any Police Magistrate under this Act to appoint any one or more fit and proper persons to serve as Police Constables under and within the jurisdiction of such Police Magistrate; and such Police Magistrate may at his pleasure remove any such Police Constable; and every such Police Constable shall obey all the lawful directions, and be subject to the government of such Police Magistrate, and shall be charged with all the powers, rights and responsibilities which belong by law to Constables duly appointed.

Punishment of Constables guilty of misconduct.

7. If any Police Constable, appointed under the authority of this Act, be guilty of any disobedience of orders, neglect of duty, or of any misconduct as such Police Constable, and be convicted thereof before any Police Magistrate, or before any Justice of the Peace, he shall forfeit a sum to be fixed by such Police Magistrate or Justice, not exceeding forty dollars and costs, and in default of immediate payment thereof shall suffer imprisonment for any time not exceeding three months, unless such fine and costs be sooner paid; and any such person may be proceeded against by indictment for any offence committed by him as Special Constable, but not both by indictment and also under this Act for the same offence.

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8. This Act shall continue in force for two years from the passing thereof, and thence until the end of the then next session of Parliament. Act to be in force for two years.

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28 VIC.—CHAPTER XXIV.

AN ACT TO ENABLE CERTAIN COUNTY COUNCILS IN UPPER CANADA TO RAISE MONEY FOR ASSISTING PERSONS IN CERTAIN CASES TO SOW THEIR LAND.

[Assented to 18th March, 1865.]

Whereas, from the failure last year of the crops in certain Counties in Upper Canada, many persons will not be able to procure seed without assistance, and it is expedient to empower the County Councils hereinafter mentioned to raise money for their relief: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows: Preamble.

1. Notwithstanding any law in force in Upper Canada, the County Councils of the Counties of Victoria, Hastings and Lennox and Addington, or any or either of them, may pass a By-law or By-laws for raising money, not exceeding twenty thousand dollars each, to be expended in the purchase of seed, and for the relief of persons suffering from the failure of the crops, and for no other purpose; and the debentures issued under such By-laws shall be a charge on the County issuing the same. Councils of certain Counties may pass by-laws to raise money for the purchase of seed, &c.

2. Such By-law shall be in the form of Schedule A to this Act, and the sections numbered two hundred and twenty-two, two hundred and twenty-three, two hundred and twenty-four and two hundred and twenty-five of the Act respecting the Municipal Institutions of Upper Canada, chapter fifty-four of the Consolidated Statutes for Upper Canada, shall not apply thereto. Form of By-law; sec. 224 of U. C. Municipal Act not to apply to it.

3. The said County Councils shall severally lend the money so raised, in such sums as they may deem expedient, to Township Councils requesting the same, and shall impose and levy a special rate in each year against the Municipality so borrowing, over and above all other County rates, until the loan and interest are repaid. Application of moneys; special rates for repayment.

4. The Township Councils shall lend the money so borrowed, and may also lend any surplus Township funds in their possession, not otherwise appropriated, to the persons aforesaid, for the purposes aforesaid. Money may be lent for the purpose of buying seed, &c.

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Or Township Council may purchase seed

5. The Township Councils, if they deem it expedient, may purchase seed and deliver the same to the persons aforesaid, in the place of money.

Township Council to impose a special rate on parties borrowing.

6. The Township Council shall, by by-law, declare the time within which such loan shall be repaid, and shall impose, levy and collect a special annual rate, over and above all other rates, against the estate, real and personal, of the party borrowing, and all the rights and remedies shall apply thereto, which now or at any time hereafter shall apply to the collection of any other rate or tax upon such land, or the Council, if it see fit, may take other security, real or personal, for the payment of such loan.

Application of moneys restricted.

7. No money raised under this Act shall be applied to any other purpose; and any surplus thereof, unapplied, shall be added to the sinking fund, for the redemption of the debentures issued as aforesaid.

Moneys lent or seed delivered exempt from seizure.

8. No money lent or seed delivered, under this Act, shall be seized in execution, garnished or attached.

Time for passing By-laws, &c., under this Act, limited.

9. No By-law shall be passed, and no debentures shall be issued under any By-law passed in pursuance of this Act, after the first day of May, one thousand eight hundred and sixty-five.

SCHEDULE A.

BY-LAW No. ——.

Enacted by the County Council of the County of ——, under and by virtue of the Statute of this Province, passed in the year one thousand eight hundred and sixty-five, intituled, *An Act to enable certain County Councils in Upper Canada to raise money for assisting persons, in certain cases, to sow their land.*

Whereas it is expedient to raise the sum of —— dollars, to be applied to the purposes in the said statute set forth: Be it therefore enacted, under the authority of the said statute, that the said sum be forthwith raised for such purposes, and that the Warden do cause debentures of the County of —— to be issued, for the sum of —— dollars, which debentures shall be payable within ten years, at furthest, from the date hereof, and shall bear interest at the rate of six per cent. per annum, payable half-yearly, on the thirtieth day of June and thirty-first day of December, in each year; principal and interest to be payable at ——, in the Town of ——.

And whereas the sum of —— dollars will require to be raised annually for paying the said debt and interest at the

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times and in the manner aforesaid; and whereas the amount of the whole ratable property in the said County, according to the last revised Assessment rolls, amounts to —— dollars: Be it therefore further enacted, that the sum of —— in the dollar on the said gross ratable value of property be levied and collected, in each year, over and beyond all other rates, general and special, for the purpose of paying the interest on, and creating a sinking fund to pay the said sum of —— dollars, raised under the authority of this By-law and the statute aforesaid.

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29 VIC.—CHAPTER XXIV.

AN ACT RESPECTING REGISTRARS, REGISTRY OFFICES, AND THE REGISTRATION OF INSTRUMENTS RELATING TO LANDS IN UPPER CANADA.

[Assented to 18th September, 1865.]

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

BOOKS OF OFFICE.

County Treasurer to provide proper books, one for each locality in the county.

20. The Treasurer of the County or City shall provide a fit and proper Register Book for each Township, reputed Township, City, Town and incorporated Village, the limits whereof are defined by law, and all indices and other books required for the business of the said office; and all such Register Books shall be as nearly as may be of the like size and description as those heretofore furnished, and shall continue to be of one uniform size or nearly so; and from the time such books are so provided and received at the Registry Office, the person who holds and executes the office of Registrar shall keep and cause to be used for that purpose, a separate Register Book for and of each Township, reputed Township, City, Town and incorporated Village, the limits whereof are defined by law, within the County, for which he holds office; and he shall also keep and cause to be used for that purpose a general Register Book for the whole County, in which shall be recorded all wills and instruments in which there is a general devise, conveyance or power affecting lands without local description, and in which book an alphabetical index of the names of all the parties mentioned by name in such instrument shall also be kept; and whenever any Registrar requires a new Registrar Book, or any other book for the use of his office, the same shall, on his application therefor, be furnished

General Registry book for the whole county and for what purposes.

New books to be furnished when required.

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to him by the Treasurer, and all such books so furnished shall be paid for by the Treasurer out of the County or City funds as the case may be; and all such books so furnished, used and kept, shall be deemed to be property of Her Majesty for the use and benefit of the public.

If the Treasurer neglects to provide books.

21. If the Treasurer refuses or neglects to furnish such books within thirty days after such application therefor, the Registrar may provide the same and recover the costs thereof from the Municipality of the County or City so in default.

County Judge or Warden to certify books.

22. The Judge of the County Court or Warden of the County shall give a certificate respecting each Registry or other Book so furnished or provided, in the form D, or to the like effect, in the Appendix hereto.

Provision when any place is separated from a county, or detached from one county and attached to another.

Certain books, &c., to be transferred.

23. When any County, City, Town, incorporated Village, Township, reputed Township or place, making part of a County wherein a separate Registry Office is or has been kept, is or has been detached from some union or County and set apart for Registration purposes or attached to or made part of another county for which a separate Registry Office is also kept, or when a separate Registry Office is established in any County or junior County, according to the provisions of this Act, the Registrar of the County from which such localities are so detached, shall deliver to the Registrar of the County set apart, or of the County whereunto the same is attached, the Registry Book or Books, and all other Books or Indices which have been kept according to the statute, exclusively for such County, City, Town, Incorporated Village, Township or reputed Township, or place, the original memorials and original duplicates of all deeds, conveyances and wills of, or relating exclusively to, any lands within the same, and all other instruments, and all maps of Cities, Towns or Villages within the same, lodged according to law in his office, also a statement of all titles to lands within such detached localities, registered before separate Registry Books were kept for each township or place, which statement shall contain a schedule of all memorials and other registered instruments which are so delivered, and also an exact copy of all memorials and other registered documents affecting such lands which, by reason of their relating to two or more localities cannot be delivered, and such statement shall also contain the same particulars with regard to wills, and shall be accompanied by indices of names, and an index of lots, which shall be considered as a part of the said statement; such Registrar shall also furnish therewith a statement

Statement to be furnished from general registry book.

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and copy of all wills and other instruments registered in any general Registry Book and shall carefully compare such statement with the original entries in the Register Books in his office, and indorse a certificate to that effect on the statement when furnishing the same; the Registrar receiving such books, and his successors, shall keep the same among the Registry Books of his office, and deal with them, in all respects in like manner as those originally supplied to and kept therein. Duty of Registrar receiving the same.

24. Any Registrar who refuses to deliver such books, plans, duplicates, indices or memorials, as aforesaid, within six months after demand in writing therefor, made upon him by the Registrar entitled to receive the same, shall be deemed guilty of a misdemeanor, and upon conviction thereof, before any Court of Oyer and Terminer and General Gaol Delivery, shall forfeit his office and be liable to a fine, in the discretion of such Court, not exceeding four hundred dollars. Penalty on Registrar refusing to make such transfer, &c.

25. In case any Registrar shall have been removed from or shall resign his office, he shall forthwith deliver up all books, plans, instruments, memorials and indices in his possession, as such Registrar, to the person who is appointed Registrar in his stead, or to any other person who may be specially appointed in writing by Her Majesty's Attorney-General or Solicitor-General for Upper Canada to receive the same, and if such Registrar refuse to do so, the Attorney-General or Solicitor-General may direct the Sheriff of the County to seize and take immediate possession of the same wheresoever found, and the Registrar so offending shall be liable to a fine, in the discretion of the Court, not exceeding two thousand dollars, and to any term of imprisonment, if the Court think fit to impose it in addition to the fine, not exceeding one year. Registrar. removed or resigning to deliver up books, &c. Proceedings in case of refusal.

26. All Registrars who have received or shall receive from another County original memorials and statements of title therewith, shall, so soon as practicable, after the passing of this Act, make full and complete copies of all such memorials in proper books, and in the same order and relation in which they were originally registered, inserting in the margin of the Registry Books, opposite to each memorial or instrument, the number thereof and the particular time at which such memorial or instrument was originally recorded, as indorsed on the back thereof by the Registrar or his Deputy, at the time of the original registration thereof. Duty of Registrars receiving original memorials, &c., from another county.

27. Whenever, in any Registry Office, any book from age or use, is becoming obliterated or unfit for future use, the Provision when any book

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becomes unfit for further use; copy to be made.

Inspector shall, by directions in writing under his hand, order such book to be re-copied in a book of like description as that required under the twenty-sixth section of this Act, so far as the same can be deciphered, by examination thereof and of the original memorials relating thereto, which book having the order of such Inspector for the copying thereof, under the hand of the Inspector, inserted at the beginning of the book, and having the affidavit or declaration of the Registrar or his Deputy, at the end of such book, to the effect that such book so copied, is a true copy of the original book of which it purports to be a copy, shall be to all intents and purposes accepted and received as the original book, and as *primâ facie* evidence that such copy is a true copy of the original book; every such original book shall, nevertheless, be carefully preserved, notwithstanding a copy thereof shall have been made, and every such Registrar or his Deputy, shall be obliged to make his affidavit or declaration in this section mentioned.

Original to be preserved

After 1st Jan., 1866, each Registrar to make an abstract Index, to lots what it shall contain.

28. The Registrar, on and after the first day of Janury one thousand eight hundred and sixty-six, shall, in a new book to be opened for the purpose, and to be called the "Abstract Index," enter under a separate and distinct head each separate lot or part of a lot of land as originally patented by the Crown, or as defined on any plan of the sub-division of any such land into smaller sections or lots after such plan shall have been filed in the Registry Office, and every instrument registered on and after the said first day of January, one thousand eight hundred and sixty-six, mentioning any such parcel or lot of land or other sub-division, and the names of all persons to each instrument, and the nature of it, (such as a "Will," "Grant," "Lease," "Power of Attorney,") the numbers of registration of all such instruments, and the day, month and year, of their registry, shall, by the Registrar, in addition to all entries now required, be entered in regular order and rotation under the proper heading of each such separate parcel or lot of land mentioned in such instrument, and the book or books, to be so kept by each Registrar for the purpose of making the said entries, shall be in the form or nearly so of Schedule E, in the appendix hereto.

To be in form E.

Also an Index of names for each locality.

29. Every Registrar shall also, for each township, city, town, and incorporated village, keep an Alphabetical Index of names exhibiting in columns the number of each memorial, the names of the different grantors, and the names of the grantees, according to the form of Schedule F of this Act.

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After said day all registrations to be at full length and how.

30. All instruments that may be registered under this Act shall, on and after the first day of January next, be registered at full length, including every certificate and affidavit, excepting certificates by the Registrar accompanying the same, upon and by the delivery to the Registrar of the original instrument where but one is executed, or when such instrument is in two or more original parts, upon and by delivery of one of such parts.

Instruments in two or more parts.

31. In case one of two or more original parts is registered, the Registrar shall endorse upon each of such original parts a certificate of such registration, and such original, so certified, shall be received as *primâ facie* evidence of the registration and of the due execution of the same.

Instruments relating to several lots in different localities.

32. When any instrument shall include different lots or parcels of land situated in different municipalities in the same County, it shall only be necessary to furnish one duplicate original of such instrument, and such duplicate original shall be copied into the Registry Book pertaining to any city, town, incorporated village, township, or place wherein any lands therein mentioned are situate, and the Registrar shall make the necessary entries and certificates accordingly.

Indexes to be completed as to Registrations before the 1st Jan., 1866.

33. In order to make every Index required by this Act complete, it shall be the duty of each Registrar in all cases when the abstract or alphabetical indices have not been heretofore kept substantially as herein provided, to enter all the registrations affecting lands, which may have been recorded before the first day of January, one thousand eight hundred and sixty-six, in the same manner and in the like books as provided in the twenty-eight and twenty-ninth sections.

Recovery of fees from municipal corporations.

Evidence.

70. Should the County Treasurer of any County or City in which a separate Registry Office is established, on the request of the Registrar for the duties performed according to this Act, refuse to pay the fees and allowances for any services required by this Act under sections twenty-three, twenty-six, twenty-seven, and thirty-three, such Registrar may prove the same and recover the same and the costs thereof from the corporation of the County or City in any Court of Record in Upper Canada; and the Inspector's certificate of the amount and of the services rendered shall be *primâ facie* evidence of the right to recover.

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INSPECTOR OF REGISTRY OFFICES.

Appointment of Inspector and his duties.

82. The Governor may, from time to time, appoint an Inspector of Registry Offices, whose duty shall be to make a personal inspection of the building in which each office is kept, and of the books, deeds, memorials and other instruments in each Registry Office, to see that the proper books have been and are provided, that they are in good order and condition, that the proper entries and registrations are made therein in a proper manner and in due and proper form and order, that the indices are properly kept, and that all the memorials and other instruments are duly endorsed and certified, and preserved, to ascertain that the office is kept duly open at and for the proper times, and that it is at all times duly attended to by the Registrar or his Deputy, to settle on some uniform device for the official seals and to see that the Registrars supply themselves therewith, to inspect the abstract and alphabetical indices when any such have been kept before this Act shall come into force, and to determine whether the same have or have not been substantially and sufficiently kept in accordance with the requirements of section twenty-eight of this Act, and if so to settle the amount of fees chargeable therefor, and to certify the same; also to inspect all new abstract and alphabetical indices and to settle and certify the sums chargeable therefor under this Act; and it shall also be his duty to ascertain whether the proper plans required by this Act have been filed in the several Registry Offices, and when necessary, to enforce the provisions of the law in that respect, and also to report upon any vacancies by death or otherwise, in the offices of Registrar and Deputy Registrar, and he shall inform the Registrar how and in what manner he shall do any particular act or amend or correct whatever he may find amiss, and he shall also ascertain the sufficiency or insufficiency of the sureties for the Registrar, and whether they are living or dead, and he shall report upon all such matters as expeditiously as may be to the Governor for his information and decision.

Inspection of new Indexes.

Reporting vacancies.

Sufficiency or insufficiency of sureties.

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SCHEDULE E.

Referred to in Section Twenty-eight of this Act.

Township of Yarmouth, Lot No.——, in the 1st Concession.

1	2	3	4	5	6	7	8	9
No. of Instrument.	Instrument.	Its Date.	Date of Registry.	Grantor.	Grantee.	Quantity of Land.	Consideration or amount of Mortgage.	
	Patent.	21st February, 1820.	.....	Crown	John Jones	All of said lot.		
54.....	B. & S.	10th January, 1835.	11th January, 1835.	David Brown and wife	George Smith...	N. ½.		
72.....	B. & S.	30th May, 1830.....	15th May, 1838.....	John Jones and wife	David Brown...	N. ½.		
460.....	B. & S.	23rd June, 1840	23rd June, 1840.....	George Smith	Charles Gates .	N. ½.		
461.....	M.	Do. Do.....	Do. Do.	Charles Gates and wife	George Smith .	N. ½ con. $500.		
490	B. & S.	15th October, 1841..	20th October, 1841..	John Jones and wife	Charles Gates..	S. ½.		
1009.....	D. M.	23rd June, 1842	1st July, 1842	Geo. Smith	Charles Gates..	N. ½.		
2560.....	B. & S.	25th April, 1855 ...	1st May, 1856	Charles Gates and wife	Alex. Erie	All.		
2875.....	B. & S.	1st May, 1860	1st May, 1860	Alexander Erie	John McIntosh	E. ½ of the N. ½ of N.E. ¼.		

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SCHEDULE F.

Alphabetical Index referred to in Section Twenty-nine.

No. of Memorial.	GRANTOR.	GRANTEE.	No. of Memorial.	GRANTOR.	GRANTEE.
	A.			A.	
1011	Abbott, George	Black, John	1029	Appleton, James	Buck, Peter.
1015	Allen, William	Cook, Edward	1039	Angus, Robert	Cooms, Joseph.
1017	Anderson, James	Smith, Thomas	1056	Anson, William	Whalks, Jane.
	B.			B.	
1004	Bernard, John	Green, Edward	1011	Black, John	Abbott, George.
1020	Burns, Robert	Cassels, George	1070	Benson, Jessie	Crooks, Nelson.
1029	Buck, Peter	Appleton, James	1096	Burrows, Joseph	Hinds, Henry.
	C.			C.	
1039	Cooms, Joseph	Angus, Robert	1015	Cook, Edward	Allen, William.
1048	Coffee, Richard	Ingrim, Benjamin	1020	Cassels, George	Burns, Robert.
1070	Crook, Nelson	Benson, Jessie	1118	Castor, Simeon	Philip, Richard.

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29 VIC.—CHAPTER XL.

AN ACT TO PREVENT THE SPREADING OF CANADA THISTLES IN UPPER CANADA.

[Assented to 18th September, 1865.]

Preamble. Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Owners of land to cut down thistles growing on their lands. **1.** It shall be the duty of every occupant of land in Upper Canada, to cut, or to cause to be cut down all the Canada thistles growing thereon, so often in each and every year as shall be sufficient to prevent them going to seed; and if any owner, possessor, or occupier of land shall knowingly suffer any Canada thistles to grow thereon, and the seed to ripen so as to cause or endanger the spread thereof, he shall upon conviction be liable to a fine of not less than two nor more than ten dollars for every such offence.

Penalty.

Duty of overseers of highways under this Act. **2.** It shall be the duty of the Overseers of Highways, in any Municipality to see that the provisions of this Act are carried out within their respective highway divisions, by cutting or causing to be cut all the Canada thistles growing on the highways or road allowances within their respective divisions, and every such overseer shall give notice in writing to the owner, possessor, or occupier of any land within the said division whereon Canada thistles shall be growing and in danger of going to seed, requiring him to cause the same to be cut down within five days from the service of such notice; And in case such owner, possessor or occupier shall refuse or neglect to cut down the said Canada thistles, within the period aforesaid, the said Overseer of highways shall enter upon the land and cause such Canada thistles to be cut down with as little damage to growing crops as may be, and he shall not be liable to be sued in action of trespass therefor; Provided that no such Overseer of highways shall have power to enter upon or cut thistles on any land sown with grain; provided also, that where such Canada thistles are growing upon non-resident lands, it shall not be necessary to give any notice before proceeding to cut down the same.

Proviso: as to lands sown with grain.

Proviso: as to non-resident lands.

Clerks of Municipalities to warn Station Masters to cut down thistles on railways. **3.** It shall be the duty of the Clerk of any Municipality in which railway property is situated, to give notice in writing to the Station-master of said railway resident in or nearest to the said Municipality, requiring him to cause all the Canada thistles growing upon the property of the said railway company within the limits of the said Municipality to be cut down as provided for in the first section of this Act, and in case such

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Penalty.

Station-master shall refuse or neglect to have the said Canada thistles cut down within ten days from the time of service of the said notice, then the Overseers of highways of the said Municipality shall enter upon the property of the said railway company and cause such Canada thistles to be cut down, and the expense incurred in carrying out the provisions of this section shall be provided for in the same manner as in the next following section of this Act.

Account of expenses to be kept by overseer.

4. Each Overseer of highways shall keep an accurate account of the expense incurred by him in carrying out the provisions of the preceding sections of this Act, with respect to each parcel of land entered upon therefor, and shall deliver a statement of such expenses, describing by its legal description the land entered upon, and verified by oath, to the owner, possessor, or occupier of such resident lands, requiring him to pay the amount; in case such owner, possessor, or occupier of such resident lands shall refuse or neglect to pay the same within thirty days after such application, the said claim shall be presented to the Municipal Council of the Corporation in which such expense was incurred, and the said Council is hereby authorized and required to credit and allow such claim, and order the same to be paid from the funds for general purposes of the said Municipality; the said Overseer of highways shall also present to the said Council a similar statement of the expenses incurred by him in carrying out the provisions of the said section upon any non-resident lands; and the said Council is hereby authorized and empowered to audit and allow the same in like manner; Provided always that if any owner, occupant, or possessor, amenable under the provisions of this Act, shall deem such expense excessive, an appeal may be had to the said Council (if made within thirty days after delivery of such statement) and the said Council shall determine the matter in dispute.

If the owners refuses to pay.

Proviso: appeal allowed.

How expenses shall be collected.

5. The Municipal Council of the Corporation shall cause all such sums as have been so paid under the provisions of this Act, to be severally levied on the lands described in the statement of the Overseers of highways, and to be collected in the same manner as other taxes; and the same when collected shall be paid into the Treasury of the said Corporation to reimburse the outlay therefrom aforesaid.

Penalty on sale of any seed mixed with thistle seed.

6. Any person who shall knowingly vend any grass or other seed among which there is any seed of the Canada thistle, shall for every such offence, upon conviction, be liable to a fine of not less than two nor more than ten dollars.

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7. Every Overseer of highways or other officer who shall refuse or neglect to discharge the duties imposed on him by this Act, shall be liable to a fine of not less than ten nor more than twenty dollars. Penalty on overseer neglecting his duty.

8. Every offence against the provisions of this Act shall be punished, and the penalty hereby enforced for each offence shall be recovered and levied, on conviction, before any Justice of the Peace; and all fines imposed shall be paid into the Treasury of the Municipality in which such conviction takes place. Recovery of penalties.

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29 & 30 VIC.—CHAPTER V.

AN ACT TO PREVENT THE UNLAWFUL TRAINING OF PERSONS TO THE USE OF ARMS, AND TO PRACTICE MILITARY EVOLUTIONS OR EXERCISES; AND TO AUTHORIZE JUSTICES OF THE PEACE TO SEIZE AND DETAIN ARMS COLLECTED OR KEPT FOR PURPOSES DANGEROUS TO THE PUBLIC PEACE.

[Assented to 15th August, 1866.]

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows: Preamble.

1. All meetings and assemblies of persons for the purpose of training or drilling themselves, or of being trained or drilled to the use of arms, or for the purpose of practising military exercises, movements or evolutions, without any lawful authority for so doing, shall be and are hereby prohibited and declared unlawful, as dangerous to the peace and security of Her Majesty's liege subjects, and of this Province; and every person who shall be present at or shall attend any such meeting or assembling for the purpose of training any other person or persons to the use of arms or to the practice of military exercises, movements or evolutions, or who, without lawful authority for so doing, shall train or drill any other person or persons to the use of arms, or to the practice of military exercises, movements or evolutions, or shall aid or assist therein, being legally convicted thereof, shall be liable to be imprisoned in the Provincial Penitentiary for the term of two years, or to be punished by fine and imprisonment in any of the common gaols of this Province for a period not less than two years, in the discretion of the Court in which such conviction shall be had; and every person who shall attend or be present at any such meeting or assembly for the purpose of being, or who shall at any such Meetings for drill, &c., without lawful authority prohibited. Punishment of persons acting as instructors at such meetings. And of persons receiving instruction.

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meeting or assembly be trained or drilled to the use of arms, or the practice of military exercises, movements or evolutions, being legally convicted thereof, shall be liable to be punished by fine and imprisonment not exceeding two years, in the discretion of the Court before which such conviction shall be had.

Such meetings may be dispersed, and persons attending them arrested, and committed for trial if not bailed.

2. It shall be lawful for any Justice of the Peace, or for any constable or peace officer, or for any person acting in their aid or assistance, to disperse any such unlawful meeting or assembly as aforesaid, and to arrest and detain any person present at or aiding, assisting or abetting any such assembly or meeting as aforesaid; and it shall be lawful for the Justice of the Peace who shall arrest any such person, or before whom any person so arrested shall be brought, to commit such person for trial for such offence, under the provisions of this Act, unless such person can and shall give bail for his appearance at the next assizes, if in Upper Canada, or at the next term or sitting of the Court of Queen's Bench in the exercise of its criminal jurisdiction, if in Lower Canada, to answer to any indictment which may be preferred against him for any such offence against this Act.

Arms or ammunition kept for any unlawful purpose may be seized and detained.

3. And whereas it is expedient to prevent the collection and keeping of arms, weapons and other things within this Province, which are so collected and kept for purposes dangerous to the public peace; and it is expedient that Justices of the Peace be authorized and empowered to seize and detain such arms and weapons, therefore it shall be lawful for any Justice of the Peace, upon information on oath of one or more credible witness or witnesses, that any pike, pike-head, spear, dirk, dagger, sword, pistol, gun, rifle or other weapon, gunpowder, lead, cartridges, bullets or other ammunition or munitions of war, are for any purpose dangerous to the public peace, in the possession of any person, or in any house or place, to issue his warrant to any constable or other peace officer, to search for and seize any such pike, pike-head, spear, dirk, dagger, sword, pistol, gun, rifle or other weapon, gunpowder, lead, cartridges, bullets or other ammunition or munitions of war, being in the possession of any such person, or in any such house or place as aforesaid; and to arrest any person having such possession as aforesaid, and in case admission into such house or place be refused, or not obtained within a reasonable time after it shall have first been demanded, to enter by force, by day or by night, into every such house or place whatsoever, and to detain and cause to be detained such person, and to keep in safe custody, in such place as the said Justice shall appoint and direct, the arms and weapons, ammunition or munitions of

And the person having them may be arrested.

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war, so found or seized as aforesaid, unless the owner thereof shall prove, to the satisfaction of such Justice, that such arms or weapons, ammunition or munitions of war, were not kept for any purpose dangerous to the public peace; and any such person having the possession or custody of any such arms, weapons, ammunition or munitions of war, and being so arrested, shall be brought before any justice of the peace, and may be dealt with, tried and punished in the same manner as is provided for persons arrested and tried under the fifth section of this Act.

How dealt.

4. Provided always, that it shall be lawful for any person from whom any such arms or weapons, ammunition or munitions of war, shall be so taken as last aforesaid, in case the justice of the peace upon whose warrant the same shall have been taken, upon application made for that purpose, refuses to restore the same, to apply to the next General or Quarter Sessions of the peace, or in Lower Canada in any district in which no such Court may then be held, to any Judge of the Court of Queen's Bench, or of the Superior Court, upon giving ten days previous notice of such application to such justice of the peace, for the restitution of such arms or weapons, or any part thereof; and the Justices assembled at such General Quarter Sessions of the Peace, or such Judge of the Court of Queen's Bench, or of the Superior Court, shall make such order for the restitution or safe custody of such arms or weapons, or any part thereof, as upon such application shall appear to them or him to be proper.

Claims for restitution of such arms, &c., how to be decided upon.

5. It shall be lawful for any Justice of the Peace, or for any constable, peace officer or other person acting under the warrant of any Justice of the Peace, or for any person acting with or in aid of any Justice of the Peace, or of any constable or other peace officer, having such warrant as aforesaid, to arrest and detain any person found carrying any such arms or weapons as aforesaid, in such manner and at such times as, in the judgment of such Justice of the Peace, to afford just grounds of suspicion that the same are for purposes dangerous to the public peace; and it shall be lawful for the justice who shall arrest any such person, or before whom any person arrested upon any such warrant shall be brought, to commit such person for trial for a misdemeanor; and such person shall be liable to be tried for a misdemeanor for carrying such arms or weapons aforesaid, and on conviction shall be punished by fine or imprisonment or both in the discretion of the Court trying him for such offence; but any such person may before conviction give good and sufficient bail for his appearance at the

Persons carrying arms for unlawful purposes may be arrested, and

Committed and tried for misdemeanor.

May be bailed.

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next Assizes or General Quarter Sessions of the Peace, or in Lower Canada in any district in which no Court of Quarter Sessions may then be held, at the next term of the Court of Queen's Bench in the exercise of its criminal jurisdiction to answer to any indictment which may be preferred against him.

All Justices of the Peace to have concurrent jurisdiction under this Act.

6. All Justices of the Peace in and for any District, County, City, Town or place, in this Province, shall have concurrent jurisdiction as Justices of the Peace, with the Justices of any other District, County, City, Town or place, in all cases as to the carrying into execution the provisions of this Act, and as to all matters and things relating to the preservation of the public peace under this Act, as fully and effectually as if each of such justice was in the commission of the peace, or were *ex officio* Justices of the Peace for each of such Districts, Counties, Cities, Towns or places.

Provision for protection of Justices and others acting under this Act.

7. Any action or suit which shall be brought or commenced against any Justice or Justices of the Peace, constable, peace officer or other person or persons for anything done or acted in pursuance of this Act, shall be commenced within six calendar months next after the fact committed, and not afterwards; and the venue shall be laid in Upper Canada, and the action or suit shall be brought in Lower Canada, in the proper county, district, or other judicial division where the fact was committed, and not elsewhere; and the defendant or defendants may plead the general issue, and give this Act and the special matter in evidence in any trial to be had thereupon; and if such action or suit be commenced or brought after the time hereby limited for bringing the same, or be brought or the venue laid in any other place than as aforesaid, then a verdict shall be found or judgment shall be given for the defendant or defendants; and in such case, if the plaintiff or plaintiffs become non-suit, or discontinue his, her or their action after appearance, or if the jury find a verdict or the Court give judgment for the defendant or defendants on the merits, or if upon demurrer judgment be given against the plaintiff or plaintiffs, the defendant or defendants shall have double costs, and may recover the same in such and the same manner as any defendant can by law in like cases.

Double costs against plaintiff failing in his suit.

This Act may be suspended and again brought into force in the whole Province or any part of it.

8. The Governor-in-Council may, from time to time, by proclamation, suspend the operation of this Act in this Province, or in any particular districts or district, counties, county or locality therein specified; and from and after the period specified in any such proclamation, the powers given by this Act shall be suspended in this Province, or in such districts or district, counties, county or locality; but nothing herein con-

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tained shall prevent or be construed to prevent the Governor-in-Council from again declaring, by proclamation, that this Province or any such districts or district, counties, county or locality, shall be again subject to this Act and the powers hereby given, and upon such proclamation this Act shall be revived and in force accordingly.

Limitation of time for prosecutions under this Act.

9. No person shall be prosecuted for any offence done or committed against the provisions of this Act, unless such prosecution be commenced within six calendar months after the offence committed.

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29 & 30 VIC.—CHAPTER LV.

AN ACT TO AMEND AND CONSOLIDATE THE ACTS TO IMPOSE A TAX ON DOGS, AND TO PROVIDE FOR THE BETTER PROTECTION OF SHEEP IN UPPER CANADA.

[Assented to 15th August, 1866.]

Preamble.

Whereas it is expedient to amend and consolidate the Act, chapter thirty-nine of the twenty-ninth Victoria, intituled, *An Act to impose a Tax on Dogs and to provide for the better protection of Sheep in Upper Canada:* Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

29 Vic. c. 39.

29 Vic. c. 39 repealed.

1. The Act passed in the twentieth-ninth year of Her Majesty's reign, and chaptered thirty-nine, intituled: *An Act to impose a tax on dogs, and to provide for the better protection of sheep in Upper Canada*, is hereby repealed.

Annual tax on dogs.

2. There shall be levied annually in every Municipality in Upper Canada, upon the owner of each dog therein, an annual tax of one dollar for each dog, and two dollars for each bitch.

Duty of Assessors as to owners of dogs.

3. The assessor or assessors of every Municipality, at the time of making their annual assessment, shall enter on their roll opposite the name of every person assessed, and also shall enter opposite the name of every resident inhabitant not otherwise assessed, being the owner of any dog or dogs, the number by him or her owned or kept, in a column prepared for the purpose.

Duty of owners of dogs.

4. The owner or keeper of any dog shall, when required by the assessor, deliver to him in writing the number of dogs owned or kept, whether one or more, and for every neglect or refusal to do so, and for every false statement made, shall incur

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a penalty of five dollars, to be recovered before any Justice of the Peace for the Municipality, with costs..

Tax to be entered on Collector's roll.

5. The collector's roll shall contain the name of every person entered on the assessment roll as the owner or keeper of any dog or dogs, with the tax hereby imposed, in a separate column, and the collector shall proceed to collect the same, and at the same time and with the like authority, and make returns to the Treasurer of the Municipality, in the same manner and subject to the same liability for paying over the same in all respects to the Treasurer as in the case of other taxes levied in the Municipality.

Tax to form a fund for damages.

Residue.

Proviso.

6. The money so collected and paid to the Clerk or Treasurer of any Municipality, shall constitute a fund for satisfying such damages as may arise in any year from dogs killing or injuring sheep or lambs in such Municipality, and the residue, if any, shall form part of the assets of the Municipality for the general purposes thereof; but the fund shall be supplemented when necessary in any year to pay charges on the same, to the extent of the amount which may have been applied to the general purposes of the Municipality.

Liability of owners of dogs.

7. The owner or keeper of any dog, that shall kill, wound or otherwise injure any sheep or lamb, shall be liable for the value of such sheep or lamb to the owner thereof, without proving notice to the owner or possessor of such dog, or knowledge by him that his dog is mischievous or disposed to kill sheep.

Proceedings by owners of sheep killed or injured.

Hearing and decision.

8. The owner of any sheep or lamb that may have been killed or injured by any dog or dogs, may apply to any two Justices of the Peace for the County, who shall enquire into the matter of complaint, and examine such owner and his witnesses (if any) upon oath; and if satisfied that such sheep or lamb had been killed or injured by any dog or dogs, and if upon the evidence produced the Justices shall be satisfied as to whom such dog or dogs belong, or by whom such dog or dogs were kept, such owner or owners if more than one, shall be liable to pay the amount of damages proved to have been sustained by such owner of the sheep or lamb killed or injured by the owner, or, if more than one, owners of such dog or dogs, equally, upon the order and decision of the Justices before whom the complaint was made, and each Justice shall have authority to summon witnesses and to enforce payment of damages and costs by distress and sale in the manner provided by chapter one hundred and three of the Consolidated Statutes of Canada, respecting the duties of Justices of the Peace out

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of session in relation to summary conviction and orders, either party aggrieved having the right to appeal by By-law provided in cases of summary conviction.

Payment of damages by Municipality if owner of dog cannot be found.

9. If the party injured shall make oath that upon diligent search and enquiry he has not been able to discover the owner or keeper of the dog or dogs by which such damage or injury has been done, or shall fail to recover the amount of damages or injury adjudged from the owner or keeper of such dog or dogs, if known, for want of distress, the Justices before whom the complaint was made, shall certify to the facts that such owners cannot be found, or that if known, there were no goods found upon which to levy the same, and the amount of damages by them adjudged, and upon the production of the certificate of such Justices to the effect aforesaid, being served upon or left with the Clerk of the Municipality, it shall be the duty of such Clerk to lay the same before the Municipal Council at its next meeting; and in such cases the Municipal Council shall issue its order on the Treasurer for the amount of the damages appearing by the certificate of the Justices of the Peace to have been sustained by the owner of any sheep or lamb killed or injured by any dog or dogs, and such amount shall be paid by the Treasurer from and out of the fund constituted by the sixth section of this Act, and from no other fund whatsoever; Provided always, that if after such damages shall have been paid by the Treasurer as aforesaid, the owner or keeper of any such dog or dogs shall afterwards be identified and proved, it shall be the duty of the Clerk of the Municipality to make complaint before a Justice of the Peace for the County, who shall summon such reputed owner, and any two Justices of the Peace shall proceed to try the case and determine the same in the manner provided by the eighth section of this Act for compelling the owners of dogs killing or injuring sheep or lambs to pay the damages.

Proviso: If owner of dog be afterwards found.

Repayment to fund by sheep-owner recovering from dog owner.

10. If after receiving the amount of such damages from the Treasurer of the Municipality, the owner of the sheep or lamb so killed or injured shall recover the value thereof, or any part of such value from the owner or keeper of any dog, he shall refund and repay to the Treasurer of the Municipality the sum so received from him, and it shall be the duty of the Clerk of the Municipality to bring an action against such owner to recover such amount and such amount when recovered shall form part of the fund constituted by the sixth section of this Act.

Dogs seen worrying.

11. Any person may kill any dog which he may see worrying or wounding any sheep or lamb.

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Dogs known to worry sheep to be killed by owner.

Penalty for neglect.

Proviso.

Proviso.

12. The owner or keeper of any dog, to whom notice shall be given, of any injury done by his dog to any sheep or lamb, or of his dog having chased or worried any sheep or lamb, shall, within forty-eight hours after such notice, cause such dog to be killed; and for every neglect so to do, he shall forfeit a sum of two dollars and fifty cents, and a further sum of one dollar and twenty-five cents for every forty-eight hours thereafter until such dog be killed; provided that it shall be proved to the satisfaction of the Justices of the Peace before whom such suit shall be brought for the recovery of such penalties, that such dog has worried or otherwise injured such sheep or lamb; and provided also, that no such penalties shall be enforced in case it shall appear to the satisfaction of such Justices of the Peace, that it was not in the power of such owner or keeper to kill such dog.

Dogs not paid for to be killed.

13. In cases where parties have been assessed for dogs and the Township Collector has failed to collect the taxes authorized by this Act, he shall report the same under oath to any Justice of the Peace, and such Justice may order such dogs to be destroyed.

Fees and returns by J. P's.

14. Every Justice of the Peace shall be entitled to charge such fees in cases of prosecutions under this Act as it is lawful for him to do in other cases within his jurisdiction, and shall make the returns usual in cases of conviction, and also a return in each case to the Clerk of the Municipality, whose duty it shall be to enter the same in a book to be kept for that purpose.

Act limited to U. C.

15. This Act shall apply to Upper Canada only.

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ADDITIONS AND CORRECTIONS.

Page 55, end of note *r*, for "*Card*," read "*Ford*."

Page 58, note *h*, at the end *add* "Where a member of the Corporation, being a baker, supplied bread to fulfil a gaol contract held by another person in his own name and for his own benefit, the member of the Corporation was held not to be disqualified." (*The Queen ex rel. Piddington* v. *Riddel*, per Morrison, J., Chambers, March 16, 1867, 3 U. C. L. J., N. S., April.)

Page 59, note *k*, at the end *add* "Where the lease, which was for twenty-one years, was originally made to a third person for the benefit of the beneficial lessee, and afterwards, during the term, it was surrendered, and a new lease made directly to the beneficial lessee for the remainder of the term, which was for less than twenty-one years, it was held that, looking at the real nature of the transaction, the lessee was not disqualified from being a member of the corporation. (*The Queen ex rel. Mack* v. *Manning*, per Morrison, J., Chambers, March 16, 1867, 3 U. C. L. J., April.)

Page 60, fourth line, *strike out* the word "male;" and in note *q*, last line, for "*McLean* v. *Graham*, 8 U. C. L. J. 125," read "*McVean* v. *Graham*, 7 U. C. L. J. 125."

Page 61, note *s*, last line, for "*McLean* v. *Graham*, 8 U. C. L. J. 125," read "*McVean* v. *Graham*, 7 U. C. L. J. 125."

Page 69, note *o*, second line from the end, *after* the words "in cities," *strike out* the words "and towns."

Page 72, note *e*, third line from the end, *strike out* the words from "thus, suppose," inclusive, to the end.

Page 84, sec. 120, fifth line, *after* the words "in cities," *strike out* the words "or one of the Councillors elect in towns."

Page 111, sec. 136, *after* the words "At every," in the beginning of the section, *insert* the word "such."

Page 115, note *e*, *before* the words "The right," *add* "A resignation implies that the person resigning has been elected into the office which he resigns." (*The Queen* v. *Blizard*, 2 L. R. Q. B. 55.)

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Page 146, note *e*, fourth line from bottom of page, for "Q. B. T. T. 1866," read "26 U. C. Q. B. 32."

Page 211, note *k*, seventh line from top of page, *after* the words "authorized so to do," *insert* the words "a bill in equity, at the instance of the rate-payer (*Blackie* v. *Staples et al*, 13 Grant, 67) or."

Page 212, note *n*, at the end, *add* "*Blackie* v. *Staples et al.*, 13 Grant, 67."

Page 252, note *h*, fifth line, for "C. P. M. T. 1866," read "17 U.C. C. P. 282."

Page 275, note *c*, at the end, for "Q. B. M. T. 1866," read "26 U.C. Q.B. 61."

Page 324, note *y*, at the commencement, *insert* "Where the city is a separate county, the Sheriff, and not the High Bailiff, is the proper officer to perform the duties here mentioned." (*In re Sheriff Jarvis and the Recorder of the City of Toronto*, 26 U. C. Q. B., H. T. 1867.

Page 346, note *n*, at the end, *add* "See *The Queen ex rel. Tinning* v. *Edgar*, 3 U. C. L. J., N. S., p. 39."

Page 357, note *r*, third line, after the word "dedication," *add* "*The Municipality of the Town of Guelph* v. *The Canada Company*, 4 Grant, 632; *Attorney-General* v. *The Inhabitants of Goderich*, 5 Grant, 403; *Attorney-General* v. *The Town of Brantford*, 6 Grant, 592; *Attorney-General* v. *The City of Toronto*, 10 Grant, 436."

Page 389, note *p*, at the beginning of the page, *after* "*McCarrall* v. *Watkins*, 19 U. C. Q. B. 248," *add* "But the better opinion now seems to be, that in such a case the roll is binding." (*Scragg* v. *The City of London*, 26 U. C. Q. B., H. T. 1867.)

Page 429, note *d*, thirteenth line from top of the page, *after* "taxes," *add* "*Doe Bell* v. *Beaumore*, 3 O. S. 243; *Myers* v. *Brown*, 17 U. C. C. P. 307."

R. J. H.
13/4/96.

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